

Illinois Environmental Protection Agency
Bureau of Air
Permit Section

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Responsiveness Summary for the
Significant Modification of the
Clean Air Act Permit Program (CAAPP) Permit Issued to
Midwest Generation, LLC for the
Waukegan Generating Station
Waukegan, Illinois

Source I.D. No.: 097190AAC
Permit No.: 95090047

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A. DECISION

On [REDACTED], 2016, the Illinois EPA issued a revised Clean Air Act Permit Program (CAAPP) permit to Midwest Generation, LLC, for the Waukegan Generating Station (Waukegan Station).

B. BACKGROUND

The Waukegan Station is a coal-fired electric power plant owned and operated by Midwest Generation. The plant has three active coal-fired boilers that produce steam that is then used to generate electricity. The Waukegan Station qualifies as a major source of emissions under Illinois' Clean Air Act Permit Program (CAAPP).

The CAAPP is Illinois' operating permit program for sources of emissions pursuant to Title V of the federal Clean Air Act. The CAAPP is administered by the Illinois EPA. It generally requires that the owner or operator of a major stationary source of emissions in Illinois apply for and obtain a CAAPP permit for the operation of such source. CAAPP permits contain conditions identifying applicable air pollution control requirements under the federal Clean Air Act and Illinois' Environmental Protection Act (Act). Compliance procedures, including testing, monitoring, recordkeeping and reporting requirements, are also established as required or necessary to assure compliance and accomplish the purposes of the CAAPP. The conditions of a CAAPP permit are enforceable by the Illinois EPA, USEPA and the public.

The Illinois EPA issued the initial CAAPP permit for the Waukegan Station on February 7, 2006. Midwest Generation appealed this permit to Illinois' Pollution Control Board (Board), contending that a number of conditions in the permit were erroneous or unwarranted. On March 16, 2006, the Board accepted Midwest Generation's petition for appeal and granted an administrative stay of the issued CAAPP permit in its entirety.

Midwest Generation and the Illinois EPA, with the assistance of the Office of the Illinois Attorney General, have successfully undertaken discussions to resolve or settle this appeal. There are three steps in the process for the settlement of the appeal that have been agreed to by the Illinois EPA and Midwest Generation.

The initial step to achieving the goal of having the Waukegan Station addressed by and subject to an appropriate CAAPP permit was initiated with the notice of the draft revised permit for public comment and hearing, followed by review of a proposed revised CAAPP permit by USEPA. The implementation of these procedures, which are reflected in the CAAPP's requirements for a significant permit modification, must be fulfilled in order to resolve, consistent with the terms of the parties' settlement, the more substantive appeal points raised in the administrative appeal. Minor points of the appeal are being addressed in parallel permit proceedings, as discussed below. The Statement of Basis supports the planned permitting action for those challenged

conditions of the CAAPP permit that can be appropriately addressed using the significant modifications procedures of the CAAPP.

The second step will be completed following completion of procedures addressed in the initial step but prior to actual issuance of a revised CAAPP permit. The Illinois Attorney General and Midwest Generation intend to file a joint motion with the Illinois Pollution Control Board (Board) requesting that the administrative stay be partially lifted to allow for modification of the initial CAAPP permit. The joint motion will also include a request for remand of the permit to the Illinois EPA so that it can be dated to reflect a full five-year term, as required under the CAAPP. Contemporaneous with the dating of the initial CAAPP permit, the Illinois EPA will issue the significant modification of the permit and parallel administrative and minor modifications to the initial permit. Upon issuance of the revised CAAPP permit, Midwest Generation can subsequently seek dismissal of its appeal currently pending before the Board.

Because a significant modification of this CAAPP permit triggered the applicable requirements of USEPA's rules for Compliance Assurance Monitoring (CAM), 40 CFR Part 64, Midwest Generation submitted the information required by these rules, including a "Compliance Assurance Monitoring Plan" (CAM Plan) for the coal-fired boilers at the Waukegan Station for emissions of particulate matter (PM). Along with the modifications to the initial CAAPP permit that were made as part of resolution of the appeal, other appropriate conditions have been added in the revised permit to address CAM.

The third step in the settlement of the appeal will be the formal reopening of the CAAPP permit for the Waukegan Station using the procedures for reopening of CAAPP permits. In this final step, new requirements under the Clean Air Act that have been adopted since the initial permit was issued, which are now applicable to Waukegan Station, will be added to the permit.¹

C. OPPORTUNITY FOR PUBLIC COMMENTS

The issuance of this modified permit was preceded by a public comment period, in accordance with Section 39.5(8) of the Act and 35 IAC Part 252. A draft of the modified permit and the accompanying Statement of Basis prepared by the Illinois EPA were available at the Waukegan Public Library, the Illinois EPA's offices in Des Plaines and Illinois EPA Headquarters in Springfield for review by the public. This comment period began on July 18, 2015. A public hearing was held at 7:00 PM on September 2, 2015 at the Illinois Beach Resort and Conference Center in Zion. The comment period was extended upon request of commenters and ended on October 30, 2015.

¹ New applicable requirements for the Waukegan Station will include, but not be limited to, newly adopted rules such as the Cross State Air Pollution Rule (CSAPR) and the Mercury and Air Toxics Standards (MATS), any issued construction permits and other requirements as determined at the time of the reopening to be applicable requirements.

In addition to oral comments made at the hearing, written comments on the planned issuance of a revised permit were jointly submitted on October 30, 2015 by the Environmental Law and Policy Center, Natural Resources Defense Council, Respiratory Health Association, and Sierra Club (Public Comments). Written comments were also received from the Lake County Health Department, the League of United Latin American Citizens of Lake County and five area residents. The USEPA submitted written comments on September 23, 2015. The Illinois EPA responses to these oral and written comments are provided in this document.

D. AVAILABILITY OF DOCUMENTS

Copies of this responsiveness summary and the revised CAAPP permit that has been issued are being made available for viewing by the public at the Illinois EPA's Headquarters at 1021 North Grand Avenue East in Springfield and at the Waukegan Public Library, 128 North County Street in Waukegan. Copies are also available electronically at www.epa.illinois.gov/public-notices and www.epa.gov/region5/air/permits/ilonline.html. Printed copies of these documents are also available free of charge by contacting Brad Frost at the Illinois EPA's Office of Community Relations by telephone (888/372-1996 - Toll Free Environmental Helpline; 217/782-7027 - desk line; or 217/782-9143 - TDD), by facsimile (217/524-5023) or by email to Brad.Frost@illinois.gov.

E. WRITTEN PUBLIC COMMENTS WITH RESPONSES BY THE ILLINOIS EPA

E.1 PUBLIC COMMENTS

Comment I - Procedural Flaw

There are serious deficiencies with the process that the Illinois EPA has undertaken to issue a legally functional CAAPP permit for the Waukegan Station. Illinois EPA is proposing to put into place until 2020 a CAAPP permit that omits many legally applicable requirements, based on an application submitted more than *twenty years ago* and an initial permit that should have expired in 2011, five years after it was first issued. This has left unacceptable gaps in the permit's conditions. The Statement of Basis notes that the USEPA expressed concern in a similar CAAPP permit appeal that Illinois EPA's stated intent to reopen the permit "lacks a sufficiently enforceable commitment."

We share USEPA's concern. Illinois EPA's statement that it "considers the reopening provision to constitute an unambiguous statutory duty on the part of [Illinois EPA] that is fully enforceable under the CAAPP" addresses but does not fully resolve that concern. The Illinois EPA has, to date, finalized significant modifications to Title V permits for four Illinois coal-fired power plants—the Coffeen Energy Center, CWLP plant, Kincaid Energy Center and Powerton Station—that, like the Waukegan Station CAAPP permit, had been stayed before the Board since

2006. Illinois EPA has not yet completed the promised process of permit reopening for any of those permits. Illinois EPA's implementation of the Title V program for the State's coal-fired power plants remains seriously deficient. A more appropriate process for the Waukegan Station would have been a full-scale permit renewal. A permit renewal would have been more consistent with and supported by the Illinois SIP and the timelines provided by Title V of the Clean Air Act, 42 USC 7661b.

Response:

The Illinois EPA's objective in this permitting action has been to achieve permit effectiveness and resolve the related CAAPP permit appeal for the Waukegan Station. The legal process for doing so is set forth in the CAAPP's procedures, which the Illinois EPA is obligated to follow. The Illinois EPA disagrees that there are deficiencies with the process set forth in the applicable laws and rules. However, if any such deficiencies with the process exist, it is a product of the statutory and/or regulatory framework of the CAAPP permitting program, which largely derives from the Clean Air Act and federal regulations implementing the same, and cannot be cured by way of this permitting action.

As explained in the Statement of Basis that accompanied the draft revised CAAPP permit, the Illinois EPA did exercise limited discretion in choosing between the procedures available under CAAPP to accomplish the goals identified above. To be more specific, the Illinois EPA declined to initiate a comprehensive review of the initial CAAPP permit, as doing so would have delayed resolution of the appeals and prolonged the period during which the Waukegan Station would continue to operate without an effective CAAPP permit.² It would also have been repetitious for a large body of the permit that was not challenged in the appeal. The Illinois EPA quickly concluded that the permit renewal process, as suggested by the comment, would not be viable. Permit renewal is not a legal option in the present circumstances, as this process is available after an initial CAAPP permit has been issued and taken effect.³

The Illinois EPA opted instead to use the CAAPP's modification procedures to make the CAAPP permit for the Waukegan Station effective and to resolve the related appeal. This decision reflected a considered judgment of the Illinois EPA and Attorney General's Office. Further, in recognizing that the initial, 2005 permit does not currently reflect recent regulatory developments, the Illinois EPA has committed to reopen the permit to incorporate Clean Air Act requirements that have become applicable to the source since 2006 when the initial permit was issued.⁴ Although those requirements have been

² The procedure that has been followed has produced an effective CAAPP permit for the Waukegan Station. This would still not have occurred if a "renewal" had been pursued as suggested by this comment.

³ As a result of the stay of the initial CAAPP permit, the initial CAAPP permit did not become effective necessitating the procedures used by the Illinois EPA.

⁴ Condition 5.9 of the revised CAAPP permit provides that the "The Permittee shall promptly submit information to assist the Illinois EPA in a reopening of the CAAPP permit in accordance with Section 39.5(15)(a)(i) of the Act and 35 IAC 270.503(a)(1)..."

and will continue to be independently enforceable, the permit reopening that will include those requirements in the CAAPP permit responds to the concern expressed in this comment regarding perceived gaps in the CAAPP permit.

Comment III -

Illinois EPA's Handling of the Revised CAAPP Permit Flouts
Illinois EPA's Own Commitment to Environmental Justice.

The draft CAAPP permit for Waukegan Station as it currently stands cannot be approved because Illinois EPA has failed to carry out its own policies regarding environmental justice for the City of Waukegan. The Illinois legislature passed the Environmental Justice Act to help ensure that "no segment of the population, regardless of race, national origin, age, or income, should bear disproportionately high or adverse effects of environmental pollution..." 415 ILCS 155/5(i) (2011). Waukegan has been recognized as an environmental justice community that, compared to the rest of the State of Illinois, has disproportionately suffered from environmental health hazards. Illinois EPA has recognized this fact explicitly in its Statement of Basis, noting that "[t]he area in which the source is located has been identified as posing a potential concern for consideration of Environmental Justice." (Statement of Basis at 11). And the conclusion is consistent with Illinois EPA's environmental justice definitions: under Illinois EPA policy, "a 'potential' [environmental justice] community is a community with a low-income and/or minority population greater than twice the statewide average." (Illinois EPA, *Environmental Justice (EJ) Policy* (accessed Sept. 14, 2015)). According to the 2010 U.S. Census, 78.3% of people in Waukegan are minorities, as opposed to 36.3% of people statewide in Illinois. Thus, the minority share of population in Waukegan is more than twice the minority share of population in the State of Illinois, which qualifies Waukegan as an environmental justice community under state guidelines.

Contrary to Illinois EPA's environmental justice policies, we are aware of few, if any, meetings held between community members and either Illinois EPA or MWG to discuss the draft CAAPP permit. It is the policy of Illinois EPA's Office of Community Relations to hold small group meetings in an affected environmental justice community "[f]or any permit action requiring public notice and for which [Illinois EPA] receives a request for public hearing." (Illinois EPA, *Environmental Justice (EJ) Policy*). Even if Illinois EPA did not receive a request for a public hearing, it would have made no sense for someone to place such a request given that Illinois EPA already scheduled a public hearing on the same day that the draft CAAPP permit was made available for public comment. Contrast this to the numerous meetings Illinois EPA had, upon information and belief, with MWG in preparing this permit. Therefore, Illinois EPA should have held at least one small group meeting with Waukegan community members.

According to Illinois EPA, small group meetings in environmental justice communities "encourage[] greater participation and candid dialogue, and more time can be spent addressing the issues of

concern." *Id.* These small group meetings would have filled a void left by the September 2, 2015 CAAPP permit hearing, which hosted over 100 attendees and did not give participants an opportunity for an actual discussion. Illinois EPA responded to none of the concerns while they were being expressed at the time of the hearing. And, in fact, the Hearing Officer's introductory statements discouraged oral public comment and he directed members of the public multiple times to not provide oral comments if they would be repetitious of other commenters. In short, in one of the few instances in which community stakeholders had an opportunity to engage with Illinois EPA on the permit, public dialogue regarding the permit was discouraged. Furthermore, it is Illinois EPA's policy to encourage permit applicants "to meet with community stakeholders to promote open dialogue early in the permitting process for appropriate permitting actions." (Illinois EPA, *Environmental Justice Public Participation Policy*, (accessed Sept. 14, 2015)). Thus, to better educate the public on the process followed here, please answer the following questions:

- (1) Did Illinois EPA hold any small group meetings with community stakeholders?
- (2) If Illinois EPA did hold any small group meetings, when were these held, where were these held, with whom were these held, and what was discussed?
- (3) Did Illinois EPA make any attempt to hold small group meetings with community stakeholders?
- (4) If Illinois EPA did make such an attempt, how did it attempt to do so?
- (5) Did Illinois EPA encourage MWG to meet with community stakeholders about the draft CAAPP permit?
- (6) Did MWG meet with community stakeholders about the draft CAAPP permit?
- (7) If MWG did hold any such meetings, when were these held, where were these held, with whom were these held, and what was discussed?

If the answer to these questions is that neither Illinois EPA nor MWG made any significant efforts to reach out to community stakeholders in the early stage of the permit process, then Illinois EPA should fully revisit this permit and properly engage community stakeholders throughout the process.

Illinois EPA has also failed to disseminate information about the draft CAAPP permit for Waukegan Station in other ways beyond failing to meet. It is Illinois EPA's policy that, when appropriate, it prepare and distribute fact sheets as a part of its environmental justice outreach strategy. (Illinois EPA, *Environmental Justice (EJ) Policy* (accessed Sept. 14, 2015)). These fact sheets should be available on Illinois EPA's webpage or via a link from its webpage. (Illinois EPA, *Environmental Justice Public Participation Policy*, (accessed Sept. 14, 2015)). Fact sheets should "provide a *plain language summary* of the major aspects of the proposed project, including the purpose and location of the proposed activity and facility, and any anticipated environmental impacts, and any controls

or work practices that will limit those impacts." *Id.* (emphasis added). Given the circumstances here, it indisputably would have been appropriate for Illinois EPA to make fact sheets that pertain to the draft CAAPP permit available. Waukegan is a city with nearly 90,000 residents whose health and wellbeing are affected by the plant. As far as the commenters can discern, however, Illinois EPA has only made available the Statement of Basis, the draft permit, the hearing notice, the hearing transcript, and a comment period extension notification. All of these documents were listed on Illinois EPA's webpage for general public notices. None of these documents would meet the description of a "fact sheet" because they have either no substantive information, or information that is far too complicated for the majority of community members to comfortably discern. The hearing notice, the hearing transcript, and the comment period extension notification contain little to no substantive information regarding the content of the draft permit. Conversely, the Statement of Basis is 79 pages long and the draft permit and its attachments are 156 pages long, and both documents are highly technical. These documents can hardly be considered "plain language summar[ies]" and are far too lengthy and technical to be considered "fact sheets." Thus to better educate the public on the process followed here, please answer: has Illinois EPA created any fact sheets pertaining to this permit? If so, where can the public access these fact sheets?

Furthermore, it is Illinois EPA's policy for the agency to encourage permit applicants to disseminate information beyond the meetings that the applicants are encouraged to hold. Illinois EPA officially encourages permit applicants to "develop a Community Relations Plan to structure ongoing dialogue with neighboring communities." *Id.* Also, it is Illinois EPA's stated policy to encourage applicants "to provide notice to residents located in and around a defined EJ area about the pending permit application and the proposed project, and to provide basic information about the project to interested residents." *Id.* Thus, to better educate the public on the process followed here, please answer: Has MWG come up with a Community Relations Plan, and if so is it publicly available? Also, has MWG provided any notice or other information to Waukegan residents?

Finally, it is Illinois EPA's policy that "when concern is expressed or identified regarding potential environmental impacts in an environmental justice area, [Illinois EPA] will look at the information provided and other available information to assess whether there are potential significant adverse environmental impacts." (Illinois EPA, *Environmental Justice (EJ) Policy* (accessed Sept. 14, 2015)). Is such an assessment conducted specifically to address environmental justice concerns? If so, we request that Illinois EPA conduct this assessment.

Because Waukegan is an Environmental Justice Community, Illinois EPA was obligated, by its own policies, to fully engage with the local community above and beyond its normal obligations. If Illinois EPA's answers to the above questions demonstrate that this process did not occur, then it needs to revisit this permit: the agency should not

approve the current draft CAAPP permit without first following its own policies on environmental justice.

Response:

Comment IV -

The Permit Fails to Include a Compliance Schedule for Opacity Violations.

The Permit must include a compliance schedule for documented opacity violations. In the present proceedings, upon information and belief, the applicant has certified compliance with all the requirements that apply to these facilities. In the Significant Modification of the CAAPP permit, Illinois EPA appears to have accepted this certification, and consequently did not incorporate any schedule of compliance or other remedial measures in the Title V/CAAPP permit. Nonetheless, there is an ongoing enforcement action by the U.S. EPA and the Illinois Attorney General against Midwest Generation over opacity violations at the Waukegan Station, among others. (*U.S. v. Midwest Generation, LLC*, No. 09-cv-05277, Complaint (August 27, 2009).) Illinois EPA may not ignore the record of continuous and ongoing opacity violations established through a federal and state enforcement action and fail to assure compliant operations at these facilities as required by the CAA and regulations.

A fundamental purpose of the Title V permitting program is to ensure that regulated entities comply with requirements in the Clean Air Act. Under 40 CFR 70.1(b) and Clean Air Act § 504(a), each regulated major source must obtain a permit that "assures compliance by the source with all applicable requirements." The Act goes on to provide that each Title V permit: "shall include enforceable emission limitations and standards, a schedule of compliance, [submission of the results of any required monitoring], and such other conditions as are necessary to assure compliance with applicable requirements of this Act" 42 U.S.C. § 7661c(a) (emphasis added). In addition, the Act mandates that the regulations require the permit applicant to "submit with the permit application a compliance plan describing how the source will comply with all applicable requirements," 42 U.S.C. § 7661b(b)(1). The term "applicable requirement" is very broad and includes, among other things, any standard or requirement under Section 111 of the Act or "[a]ny term or condition of any preconstruction permit" or "[a]ny standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the [Clean Air] Act." 40 CFR 70.2(2)(1). Applicable requirements include, in other words, state implementation plan ("SIP") requirements. See 40 CFR 70.2.

A Title V permit applicant must disclose its compliance status and either certify compliance or enter into an enforceable schedule of compliance to remedy violations. 42 U.S.C. § 7661b(b); 40 CFR

70.5(c)(8-9). If a facility is in violation of an applicable requirement at the time that it receives an operating permit, the facility's permit must include a compliance schedule. See 40 CFR 70.5(c)(8)(iii)(C). The only exemption is if the reported violation has been corrected prior to permit issuance. The Act defines "compliance schedule" as "a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation, or emission prohibition." 42 U.S.C. § 7661(3).

A state or federal Notice of Violation or an ongoing enforcement action are sufficient demonstrations of violations to trigger the requirement for a compliance schedule. "[I]ssuance of these NOV's and commencement of the suit is a sufficient demonstration to the Administrator of non-compliance for purposes of the Title V permit review process." *NY PIRG v. Johnson*, 427 F.3d 172, 180 (2005); see also *NY PIRG v. Whitman* 321 F.3d 316, 334 (2003)

Thus, if a power plant is subject to an enforcement action for violation of SIP requirements, the plant's operating permit must include an enforceable compliance schedule designed to bring the plant into compliance with those requirements. The plant is then bound to comply with that schedule or risk becoming the target of an enforcement action for violating the terms of its permit—in addition to the original violation that triggered the need for a compliance schedule. In the present case, there is both a Notice of Violation and an ongoing enforcement action over the opacity violations at Waukegan Station. (*U.S. v. Midwest Generation, LLC*, No. 09-cv- 05277, Complaint (August 27, 2009).) Because of these established violations of opacity violations taking place at the Waukegan Station, the Title V permit must include a compliance schedule for opacity. 40 CFR 70.5(c)(8)(iii)(C).

Response:

Comment V –

The Proposed CAM Plan is Inadequate to Assure Compliance with PM Emission Limits.

The Waukegan Station's emission units include two active coal-fired boilers, Boiler BLR 7, and Boiler BLR 8. Condition 7.1.4(b)(i) and (ii) subjects these boilers to an hourly average particulate matter ("PM") emissions limits of 0.10 lb/mmBtu of actual heat input for Boiler BLR 7 and 0.12 lb/mmBtu of actual heat for Boiler BLR 8. These limits are incorporated from Illinois' State Implementation Plan ("SIP") at 35 IAC 212.201 and 212.203.

As noted in the Statement of Basis, the CAM rule in 40 CFR Part 64 is applicable to the Boilers' PM emissions due to Midwest Generation's submission of an application for significant modification of conditions related to the Boilers. (See Statement of Basis at 7) (citing 40 CFR 64.5(a)(2)). The proposed Significant Modification includes a new Condition 7.1.13-1, which includes Illinois EPA's conditional approval of a CAM plan proposed by Midwest Generation and set out in Tables 7.1.13a and 7.1.13b. The proposed CAM plan would require monitoring of the operation of the PM control device: the electrostatic precipitators ("ESPs") on the Boilers. (See Table 7.1.13a and 7.1.13b) ("Opacity less than [*]% averaged over a 3 hour block period is an indicator of proper ESP operation and provides reasonable assurance of meeting the 0.10 lb/mmBtu or 0.12 lb/mmBtu PM limits.").

The sole proposed indicator for the proper operation of the ESPs is the opacity in the flue gas streams in the stacks for the boilers for Boilers BLR7 and BLR8. The opacity of the flue gas stream is measured by a continuous opacity monitoring system ("COMS") installed in the stack. Illinois EPA proposes that the indicator range, in order to provide a reasonable assurance of compliance, be based on the percentage of opacity measured by the COMS, averaged over three-hour block periods. (See, Draft Revised CAAPP Permit, Tables 7.1.13a and 7.1.13b). The proposed plan does not specify the percentage of opacity that would trigger responsive actions for the Boilers, but instead requires Midwest Generation to perform "PM emissions testing" within 120 days of the issuance of the revised permit, and then submit an application for a proposed modification "to incorporate information for the opacity derived from testing." (Conditions 7.1.13-1(b)(i) and (ii)). The permit does not specify how opacity is to be correlated with PM emissions, though. According to the Statement of Basis:

[T]esting for PM emissions will be conducted to determine appropriate indicator ranges for assuring compliance with the PM emissions limit under various operating conditions for the boilers. Testing will determine the upper limit of opacity, as measured in the flue gas stream, which assures compliance with the PM limit. (Statement of Basis at 52)

There are two central problems with the CAM plan's proposed approach to monitoring the operation of the ESPs for the coal-fired boilers at the Waukegan Station. First, the CAM plan does not reflect an acceptable procedure for setting an opacity indicator range to assure proper operation of the ESP. Second, the CAM plan does not include monitoring of any other parameters of ESP performance.

Response:

The CAM Plan submitted by Midwest Generation satisfies the criteria and requirements in 40 CFR 64.3 for the plan to be "conditionally" approved in accordance with 40 CFR 64.6(b). In particular, these comments do not demonstrate the parameter chosen (opacity) and the future establishment of a corresponding indicator range fails to fulfill the criteria in 40 CFR 64.3(a) for CAM Plans. In addition,

this comment does not show that the CAM Plan submitted by Midwest Generation for the coal-fired boilers at the Waukegan Station is not "conditionally approvable."

In addition, 40 CFR Part 64 does not compel all sources to identify a "procedure" or "procedures" in developing an indicator range for opacity or other selected indicators of emission control performance. The CAM rule generally provides that a source must establish "an appropriate range(s)" for an indicator in accordance with designated objectives in 40 CFR 64.3(a)(2) and the requirements and criterion of 40 CFR 64.3(a)(2) and (3). In accordance with 40 CFR 63.4(d)(1), Midwest Generation has submitted a test plan and schedule for obtaining data to fulfill the operating parameter data requirement from emissions testing under 40 CFR 64.4(c)(1). This test plan and enforceable schedule is included in the permit as Conditions 7.1.13-1 of the revised permit. A separate provision in the CAM rules addressing the submission of "procedures for establishing indicator ranges" is not applicable, as the source has opted to rely upon engineering data in lieu of emissions testing, See 40 CFR 64.4(d)(2).

Comment V.A.1A

The CAM Plan Does Not Contain An Acceptable Procedure for Setting an Opacity Indicator.

To issue a legally sufficient CAM plan, Illinois EPA "must explain how the indicator range in the CAM plan provides a reasonable assurance of ongoing compliance with the underlying PM limits in accordance with 40 CFR 64.3(a)(2)." *In the Matter of WE Energies Oak Creek Power Plant*, EPA Administrator Order at 18 (June 12, 2009). The permit record here contains no such explanation, and no clear description of how the opacity indicator range will be derived. What is clear, though, is that the range would be based on three-hour block averages. This is inconsistent with the underlying PM limit, which has a one-hour averaging period. The CAM plan must include a procedure for setting an opacity indicator range that will yield a range reflecting the proper operation and maintenance of the ESPs, with an ample margin of compliance with the hourly PM emission limit.

At the most, the Statement of Basis only implies that acceptable opacity ranges will extend to "the upper limits of opacity ... which assures compliance with the PM limit." (Statement of Basis at 52). This approach does not comport with the CAM rule. The CAM rule is *not* premised on identifying and selecting the most extreme indicator range under which a source can avoid violating an emission limit. Instead, the CAM rule provides that indicator ranges "shall reflect the proper operation and maintenance of the control device (and associated capture system), in accordance with applicable design properties, for minimizing emissions over the anticipated range of operation conditions at least to the level required to achieve compliance with the applicable requirements." 40 CFR 64.3(a)(2). The basic approach of the CAM rule is to determine what parametric indicator ranges reflect the proper operation and maintenance of the relevant pollution control device, and to make sure that the permit holder promptly addresses any

deviation from those ranges with responsive actions. In this manner, compliance with the associated emission limit is assured because operational problems that otherwise would cause violations are promptly corrected. By contrast, requiring responsive action only if there is an exceedance of the "upper limit of opacity" at which one can be sure that there is no PM violation is not in line with the CAM rule's purpose, and would not yield responsive action until a violation likely already had occurred.

Deficiencies in Midwest Generation's data regarding the correlation between PM and opacity are further reinforced by the permit record. The record contains a CAM plan chart that says for unit 8 "data provides very little aid in establishing a sufficient correlation between opacity and PM." (Midwest Generation CAM Plan: Waukegan Station, March 4, 2013.) As recently as May of 2015, Illinois EPA indicates that it still has insufficient data regarding the correlation between PM and opacity by asking Midwest Generation for "recent testing that may have been completed that would compare PM and opacity" for the Waukegan Station. (Email from Doug Rutherford to Andrew Sawula, "Statement of Basis - Waukegan Station CAAPP Permit" (May 1, 2015).)

Describing indicator ranges generally, USEPA has stated that selected ranges "should be indicative of the normal operating range under good operation and maintenance practices". USEPA, *Technical Guidance Document: Compliance Assurance Monitoring, Revised Draft* (Aug. 1998), at 2-27. As USEPA recognized in the preamble to the CAM rule, this approach can lead to the setting of indicator ranges well below the "upper limit" of the indicator that would assure compliance with the monitored emission limit:

The Agency understands that many sources operate well within permitted limits over a range of process and pollution control device operating parameters. Depending on the nature of pollution control devices installed and the specific compliance strategy adopted by the source or the permitting authority, part 64 indicator ranges may be established that generally represent emission levels *significantly below* the applicable underlying emission limit (62 FR 54,907 (emphasis added)).

USEPA also has directly addressed the issue of setting opacity indicator ranges in CAM plans designed to assure compliance with PM emission limits at coal-fired power plants, making clear that a margin of compliance is necessary in setting an opacity indicator range. USEPA, *Compliance Assurance Monitoring (CAM) Protocol for an Electrostatic Precipitator (ESP) Controlling Particulate Matter (PM) Emissions from a Coal-Fired Boiler, Proposed* (Apr. 2003) ("ESP CAM Protocol"). The ESP CAM Protocol provides:

You will establish the opacity indicator range at a level equal to or less than an opacity at which the source has demonstrated a margin of compliance with the PM emissions limit of at least 10 percent at normal operating conditions *You should not*

select an opacity higher than the maximum opacity you observed during the calibration test program.

In sum, setting an opacity range based upon the highest opacity range that could assure compliance with the applicable PM emission limit is inconsistent with the CAM rule's requirement to assure the "proper operation and maintenance" of the control device. 40 CFR 64.3(a)(2)

An additional consideration in setting an opacity indicator range for the coal-fired boilers at the Waukegan Station is that the upper bound should be well below the boilers' opacity limit of 30 percent.

According to the Statement of Basis, based on preliminary data analysis by Illinois EPA, "compliance with the PM standard is reasonably assured if the opacity of emissions from the boilers does not exceed 30 percent on a 3-hour block average." (Statement of Basis at 22) Logically, compliance with PM standards is then not reasonably assured if opacity exceeds 30 percent on a 3-hour block average. When opacity standards represent a likely exceedance of PM standards, opacity levels below those standards should be selected as a CAM indicator. As USEPA noted in the preamble to the CAM rule,

Opacity standards are often established at a level which represents a likely significant exceedance of the particulate matter standard. In those circumstances, an opacity level below a required opacity standard would be more appropriate as a CAM indicator (62 FR 54,923).

As such, the opacity indicator range for the boilers at the Waukegan Station should be set well below the applicable opacity limit of 30 percent, pursuant to 35 IAC 212.123.

The opacity indicator range also should be based on opacity averaged over no longer than a one-hour period. The CAM rule provides that a CAM monitoring program must "[a]llow for reporting of exceedances (or excursions if applicable to a COMS used to assure compliance with a particulate matter standard), consistent with any period for reporting of exceedances in an underlying requirement." 40 CFR 64.3(d)(3)(i). In this case, the Illinois SIP provides that the applicable averaging period in the underlying PM emission limit is hourly. 35 IAC 212.202.

Therefore, the CAM plan must provide for reporting of opacity excursions on an hourly basis. Measuring opacity over a three-hour averaging period cannot assure compliance with an hourly standard.

Accordingly, the Illinois EPA must revise the CAM plan to set out a method that will yield an hourly opacity indicator range that reflects proper operation and maintenance of the ESP, including an ample of margin of compliance from the PM emission limit.

Response:

The Illinois EPA disagrees with the points raised in this comment. 40 CFR 64.3(d)(1) provides that if a continuous opacity monitoring system is required for a subject unit by other rules, such system shall be

used to satisfy the requirements of 40 CFR Part 64. While limits or standards for opacity commonly address average opacity over a period of six minutes, based on a number of individual measurements or readings during such period, opacity can also be determined for shorter or longer periods, including on an three-hour average, as proposed by Midwest Generation in its CAM Plan for the coal-fired boilers at the Waukegan Station. Analysis of test data for PM emissions and opacity data for coal-fired boilers shows that compliance with a PM limit of 0.1 lb/mmBtu, as applicable pursuant to 35 IAC 212.202, is reasonably assured if the opacity on a three-hour average is no more than 30 percent. This does not mean that opacity greater than 30 percent, three-hour average, indicates that an exceedance of the PM standard would be likely. The CAM Rule does not require that a value or indicator range be determined that would be indicative of a definitive violation of the applicable standard.

For state emission standards for which stack testing must be conducted to measure emission rates and verify compliance, it is reasonable that the nominal duration of such stack tests be used as the compliance period or averaging time over which compliance with such standard is determined. This is because the PM emission rate can only be measured with a reasonable degree of confidence by a stack test. Since a stack test to verify compliance with 35 IAC 212.202 generally consists of three runs, as provided for by 35 IAC 283.210,⁵ and each run nominally lasts one hour, the compliance period for 35 IAC 212.202 in actual practice is three hours.

Finally, USEPA did not state as a general matter that any approved indicator range should not exceed the maximum opacity observed during performance testing. USEPA made this statement in the specific context of its ESP CAM Protocol. This Protocol would rely on a computer model to calculate the PM control efficiency for the ESP. This Protocol actually states (as quoted in the comment) the opacity indicator that would trigger the use of the computer model should not exceed the value that was used during the calibration of the model. This would be appropriate as the computer model would not be developed to address higher levels of opacity, for which the model had not been calibrated.

Moreover, a more careful reading of USEPA's preamble for the adoption of the CAM Rule shows that USEPA determined that the CAM Rule will act to support or facilitate the proper operation and maintenance of emission units and their control devices by sources. This is because the CAM Rule requires that indicator ranges be established that provide a reasonable assurance of compliance with the applicable emission limitations or standards.⁶ It is relevant that USEPA focuses

⁵ Similar provisions for averaging of test results are found in federal rules, see 40 CFR 60.7(f) and 40 CFR 63.7(e)(3).

⁶ As explained by USEPA in the preamble to the adoption of the CAM Rule,

These examples point to the underlying assumption that there is a reasonable assurance of compliance with emission limits so long as the emission unit is operated under the conditions anticipated and the control equipment that has been proven capable of complying continues to be operated and maintained properly. In most cases, this

upon the demonstration of compliance made for an emission unit without any mention of "proper operation and maintenance" of control devices. As specifically related to the establishment of indicator ranges for purposes of CAM, USEPA stated the following.

...the presumptive approach for establishing indicator ranges in part 64 is to establish the ranges in the context of performance testing. To assure that conditions represented by performance testing are also generally representative of anticipated operating conditions, a performance test should be conducted under conditions specified by the applicable rule or, if not specified, generally under conditions representative of maximum emission potential under anticipated operating conditions. In addition, the rule allows for adjusting the baseline values recorded during a performance test to account for the inappropriateness of requiring that indicator conditions stay exactly the same as during a test. The use of operational data collected during performance testing is a key element in establishing indicator ranges; however, other relevant information in establishing indicator ranges would be engineering assessments, historical data, and vendor data. Indicator ranges do not need to be correlated across the whole range of potential emissions.
62 FR 54,926 (Oct. 22, 1997)

In addition, with respect to indicator ranges and proper operation and maintenance, the CAM Rule only provides that:

...Such range(s) or conditions(s) shall reflect the proper operation and maintenance of the control device (and associated capture system), in accordance with applicable design properties, for minimizing emissions over the anticipated range of operation conditions at least to the level required to achieve compliance with the applicable requirements. ...
40 CFR 64.3(a)(2)

Comment V.A.1B (second to last paragraph))

relationship can be shown to exist through the performance testing without additional site-specific correlation of operational indicators with actual emission values. The monitoring design criteria in Sec. 64.3(a) build on this fundamental premise of the regulatory structure.

Thus, Sec. 64.3(a) states that units with control devices must meet certain general monitoring design criteria in order to provide a reasonable assurance of compliance with emission limitations or standards for the anticipated range of operations at a pollutant-specific emissions unit. These criteria mandate the monitoring of one or more indicators of the performance of the applicable control device, associated capture system, and/or any processes significant to achieving compliance. The owner or operator shall establish appropriate ranges or designated conditions for the selected indicators such that operating within the established ranges will provide a reasonable assurance of compliance for the anticipated range of operating conditions. The requirement to establish an indicator range provides the objective screening measure to indicate proper operation and maintenance of the emissions unit and the control technology, i.e., operation and limitations such that there is a reasonable assurance of compliance with emission limitations or standards.
62 FR 54918 (Oct. 22, 1997)

Pursuant to 35 IAC 212.123 and 212.124, opacity exceedances of two 6-minute averaging periods constitute violations of the SIP's opacity and PM emission limits. Further, 35 IAC 212.123(b) imposes a 24-minute average (a limit on opacity exceeding 60 percent in three consecutive 8-minute periods). This indicates that the intent behind 35 IAC 212.123 was to create a short term limit that should not be averaged over more than a 12-minute period.

Response:

The observations in this comment are not relevant to the compliance time period of either the opacity or PM emission standard that is applicable to the coal-fired boilers at the Waukegan Station. As 35 IAC 212.109 provides that observations of opacity by a human observer are to be made in accordance with USEPA Method 9, the compliance period for the opacity standard in 35 IAC 212.123(a) is a 6-minute average. Arguably, the compliance period for the alternative opacity standard in 35 IAC 212.123(b) is 24 hours, as 24 hours of opacity data may be needed to determine compliance with this standard.⁷ Certainly, neither standard applies on a 12-minute average as suggested by this comment. Moreover given the disparity in compliance periods, it is unclear how an exceedance of either of these opacity standards would necessarily constitute credible evidence of a violation of a PM standard for which the duration of emission testing to measure PM emissions is nominally three hours.⁸

Comment V.A.2 -

The CAM Plan Should Include Additional Parameters for the ESPs.

Illinois EPA should revise the CAM Plan to include monitoring of other parameters of ESP performance in addition to opacity. Specifically, pursuant to USEPA guidance, the CAM plan should include monitoring of voltage and current for each ESP field.

In the ESP CAM Protocol, USEPA described the difficulties of using opacity as an indicator for PM emissions, in general, due to the lack of a linear relationship between opacity and PM:

⁷ Theoretically, the terms of 35 IAC 212.123(b) could allow average opacity from an emissions unit over a 24 hour period to be as high as 30.5 percent. $[(3 \times 8 \text{ minutes} \times 60\% \text{ opacity}) + (1,416 \text{ minutes} \times 30\% \text{ opacity})] / 1440 \text{ minutes} = 30.5\% \text{ opacity}$. In this regard, 35 IAC 212.123(b) provides that:

The emission of smoke or other particulate matter from any such emission unit may have an opacity greater than 30 percent but not greater than 60 percent for a period or periods aggregating 8 minutes in any 60 minute period provided that such opaque emissions permitted during any 60 minute period shall occur from only one such emission unit located within a 305 m (1000 ft) radius from the center point of any other such emission unit owned or operated by such person, and provided further that such opaque emissions permitted from each such emission unit shall be limited to 3 times in any 24 hour period. [Emphasis added]

⁸ For an emission unit that is subject to 35 IAC 212.123, as stated in another comment, 35 IAC 212.124(d)(2)(A) provides that a violation of the 30 percent opacity limit in 35 IAC 212.123 presumptively constitutes a violation of the state PM standard that applies to that unit. However, it is not appropriate for the Illinois EPA to discuss the import of 35 IAC 212.124(d) in this responsiveness summary as the presumption in this rule may be the subject of litigation in the near future.

[O]pacity, a commonly used parameter, can indicate ESP performance. If the opacity is increasing, you can reasonably assume that PM emissions are increasing. What generally is not known on a quantitative basis is the magnitude of the mass emissions relative to any one opacity value or the increase in mass emissions relative to the increase in opacity. In addition, and perhaps most importantly, the relationship between opacity and mass emissions can vary significantly with the particle size distribution and refractive index of the ash particles. The properties of the particulate matter can be influenced by fuel changes and the number and location of ESP electrical sections in service.

Because the relationship between opacity and PM "is not robust over all operating conditions," USEPA's monitoring protocol for CAM plans at coal plants provides that monitoring opacity alone is not sufficient. Instead, USEPA's "presumptively acceptable" approach, see 40 CFR 64.4(b)(5), provides that the source also should monitor other ESP operating parameters—specifically, voltage and current for each ESP field—and run a calibrated computer model to calculate ESP efficiency when the opacity excursion level is triggered. See also USEPA, *CAM Technical Guidance Document*, App. A.25, *Electrostatic Precipitator (ESP) For PM Control—Facility FF* (June 2002), at A.25-2 (model CAM plan providing that "ESP secondary voltage and current are measured for each field to determine the total power to each ESP"). In order to assure proper operation and maintenance of the boilers' ESPs, Illinois EPA also should require parametric monitoring of voltage and current for each ESP field.

Response:

Given the provisions of the CAM rules, it was wholly appropriate for Midwest Generation to have selected opacity as the sole indicator for the performance of the ESPs on the boilers. The fact that Midwest Generation did not include a second parameter, e.g., "corona power" or current, in its CAM Plan does not show that the plan should be found unacceptable. The basic criterion for an acceptable CAM Plan, as specified by 40 CFR 64.3(a), is that the plan will provide "a reasonable assurance of compliance" with the applicable standard or emission limitation. The plan submitted by Midwest Generation meets this criterion. Therefore, inclusion of additional indicators in the CAM Plan is not justified at this time given the relevant criterion has been satisfied.

This comment does not show that the CAM Plan should include additional indicators for ESP performance. The comment points to USEPA guidance suggesting that the CAM Plan should also address voltage and current for each ESP field. Thus, the addition of corona power is not supported by the comment.

In addition, the comment goes on to state that because of the lack of a linear relationship between opacity and PM, there is not a "robust" correlation over all operating conditions and thus additional monitoring of other ESP parameters must be included in the Plan.

Particularly, the comment relies on: 1) a statement in USEPA guidance regarding the inadequacy of opacity alone, 2) presumptively acceptable monitoring in 40 CFR 64.4(b)(5) and (3) an example in the USEPA CAM Technical Guidance document. Each of these points is not sufficient either alone or in combination to justify addition of a second indicator of ESP performance parameter to the CAM Plan.

With regard to the ESP CAM Example, USEPA clearly indicates in the CAM Technical Guidance Document, Appendix A, that the examples of approaches to CAM that are attached to that document are merely examples and are not prescriptive.⁹ As such, the use of corona power in the ESP CAM Example as another indicator for performance of an ESP does not mean that opacity, alone, is not acceptable in a CAM plan. Thus, the ESP CAM Example does not address an appropriate approach to CAM for the ESPs on the Waukegan Station boilers, for which continuous opacity monitoring is required. In fact, the "proposed" ESP CAM Protocol referenced in the comment actually suggests just the opposite as it states that "...for any given ESP and boiler, opacity can serve as a very useful indicator to initiate additional action..." In this regard, opacity monitoring is a well-established means to address emissions of PM.¹⁰

Robust statistics do not require that the value of one parameter will in all cases enable an accurate prediction of the value of a second parameter that is of interest. "Robustness" only requires that the value of the first parameter be sufficient for the purpose for which it is being used. In this case, a robust relationship is present between 30 percent opacity on a 3-hour average and compliance with the applicable PM standard.

Lastly, the fact that a particular approach for CAM has been deemed by USEPA to be presumptively acceptable, does not show the CAM Plan submitted by Midwest Generation is unacceptable. The relevant question for the CAM plan submitted by Midwest Generation for the coal-fired boilers at the Waukegan Station is whether it meets the criteria set out in 40 CFR 64.3. For these boilers, the use of opacity as the CAM indicator will provide an effective and reasonable means of assuring compliance with the applicable PM standard on an ongoing basis, as required by 40 CFR 64.3(a)(1).

Comment V.A.3 -

The CAAPP Permit Would Not Address Implementation of MATS

The CAAPP permit should address how Midwest Generation will ensure

⁹ As stated in the introduction to Appendix A (Example Monitoring Approach Submittals) of the *CAM Technical Guidance Document*, "Note that the resulting examples are not necessarily the only acceptable monitoring approaches for the facility or similar facilities; they are simply examples of different approaches used by particular facilities. The owner or operator of a similar facility may propose a different approach that satisfies part 64 requirements." *CAM Technical Guidance Document*, September 2004, p A-vii.

¹⁰ Numerical values of opacity can be reliably determined by observations of the exhaust from emission units by individuals who have been properly trained and demonstrated their ability to make such observations in accordance with USEPA Method 9. Numerical measurements of observations can also be made with monitoring instruments that are installed in the stack or ductwork of an emission unit, in which case opacity can be determined on a continuous basis.

that the boilers at the Waukegan Station comply with the Mercury and Air Toxics Standards (MATS), 40 CFR 63 Subpart UUUUU, which was adopted by USEPA in 2011. Although the Illinois EPA granted Midwest Generation a one-year compliance extension for a portion of the MATS rule, most of the requirements went into effect for these boilers on April 16, 2015. 40 CFR 63.9984(b).

Along with various other HAPs, the MATS rule regulates emissions of non-mercury metal HAPs. For non-mercury metal HAPs, subject coal-fired boilers must comply with either: 1) A limit for filterable PM, 2) Limit for individual non-mercury metal HAPs, or 3) A limit for total non-mercury metal HAPs. The limit for PM emissions is 0.03 lb/mmBtu, or alternatively is 0.3 lb/MWh. (40 CFR 63 Subpart UUUUU Table 2.) For the coal-fired boilers at the Waukegan Station, these PM limits are much more stringent than the current PM emission limit, 0.10 lb/mmBtu. Moreover, the MATS rule also requires continuous PM emission monitoring, a PM continuous parametric monitoring system or quarterly performance testing. (40 CFR 63 Subpart UUUUU Tables 6 and 7.)

For the coal-fired boilers at the Waukegan Station, the Illinois EPA has not explained how Midwest Generation plans to comply with the MATS rule. This is particularly egregious given the deliberations on the CAM Plan for these boilers. Both the MATS and the CAM rules contain or create requirements related to monitoring of the PM emissions of the boilers. However, the CAM Plan does not address the PM monitoring that Midwest Generation must conduct pursuant to the MATS rule. Therefore, for the Waukegan Station, by when does Midwest Generation intend to comply with the MATS for non-mercury metal HAPs? Does Midwest Generation plan to meet the MATS emissions limits for PM, for individual non-mercury metal HAPs or for total non-mercury metal HAPs? If Midwest Generation plans to comply with the PM limit, how does it intend to demonstrate compliance and how will this impact or interrelate with the proposed CAM Plan?

Response:

The questions in this comment are not relevant to the issuance of a revised CAAPP permit for the Waukegan Station, which has now occurred. As discussed already, applicable requirements that took effect after the initial CAAPP permit issued in September 2005 must be addressed during the reopening permit action for the permit. The MATS rule is one of these post-2005 requirements that will be addressed in the reopening proceeding, for which notice was provided to Midwest Generation when this revised CAAPP permit was issued.

Notwithstanding this fact, Midwest Generation is currently subject to all requirements of the MATS rule except for requirements related to non-mercury metal HAPs, for which it has received a one-year

compliance extension.^{11, 12} The extension request submitted by Midwest Generation in 2013¹³ and revised in 2014 states that it is complying with other requirements of MATS rule that are currently applicable. Midwest Generation has not proposed to incorporate or rely on monitoring conducted under MATS in its current CAM Plan for the PM emissions of the boilers, which plan addresses compliance with the applicable state emission standard, 35 IAC 212.202.¹⁴

Comment V.B -

The CAM Plan Does Not Include Sufficient Responsive Actions.

Condition 7.1.13-2 of the proposed CAM plan sets out the actions that Midwest Generation is to take in response to excursions of the indicator range. Essentially, the plan requires Midwest Generation to "restore operation of the [Boilers] (including the control device and associated capture system) to [their] normal or usual manner of operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions." Condition 7.1.13-2(c)(ii)(A). This standard does not provide enough detail to assure prompt correction of improper operation, and should be revised to include site-specific description of required responsive actions.

USEPA has emphasized the importance of responsive actions within a CAM plan:

[T]he Agency believes it is critical to underscore the need to maintain operation within the established indicator ranges. Therefore, the rule includes the requirement to take prompt and effective corrective action when the monitored indicators of compliance show that there may be a problem. Requiring that owners and operators are attentive and respond to the data gathered by part 64 monitoring has always been central to the CAM approach.

* * *

[I]t is essential to the CAM goal of ongoing compliance operation that part 64 require that owners or operators

¹¹ Section 112(i)(3)(B) of the Clean Air Act provides that an existing source up to one additional year to comply with new requirement of a NESHAP rule if more time is necessary for the installation of controls.

¹² For the coal-fired boilers at the Waukegan Station, for the MATS rule, Midwest Generation requested an compliance date extension pursuant to Section 112(i)(3)(B) of the Clean Air Act to complete upgrades of the ESPs on the boilers and installation of PM continuous monitoring systems. Accordingly, the compliance date extensions issued by the Illinois EPA only addressed provisions of the MATS rule for non-mercury metal HAPs.

¹³ Midwest Generation letter dated March 5, 2015 states: "All other units for which extensions are requested are fully compliant with the MATS limits for mercury and acid gases the took effect on April 16, 2015."

¹⁴ The indicator or monitoring that is used in the CAM Plan for the coal-fired boilers at the Waukegan Station may need to re-evaluated in the future. This is because 40 CFR 64.3(d)(1) provides:

"If a continuous emission monitoring system (CEMS), continuous opacity monitoring system (COMS) or predictive emission monitoring system (PEMS) is required pursuant to other authority under the Act or state or local law, the owner or operator shall use such system to satisfy the requirements of this part. "

respond to the data so that any problems indicated by the monitoring are corrected as soon as possible.
62 FR 54,931.

One example of effective responsive actions can be found in the Title V permit for the Huntley Steam Generating Station, issued by the New York Department of Environmental Conservation. The Huntley permit incorporates tiered responsive actions for the opacity indicator. (Huntley Permit, at 73-74). Under this approach, increasing levels of opacity trigger requirements of more aggressive responsive actions, culminating with a requirement that the unit be removed from service if rolling 24-hour opacity exceeds 19 percent, or rolling 168-hour opacity exceeds 18 percent.

The CAM plan for the Waukegan Station should include a similarly tiered requirement for responsive action, beginning with inspection requirements at lower levels of opacity, and culminating with required shutdown of the affected boiler at a level near the upper bound of opacity within which compliance with the PM emission limit can be assured. This site-specific description of necessary responsive actions will be more enforceable than the currently vague reference to returning boilers to their normal manner of operation as quickly as possible.

Response:

This comment did not justify any changes to draft Condition 7.1.13-2. This condition simply reiterates the relevant language in 40 CFR 64.7(d)(1), which addresses how a source must respond to excursions or exceedances identified pursuant to its CAM monitoring.¹⁵ As such, it is fully appropriate that this condition be included in the issued permit in the form in which it was set out in the draft permit without any changes.

The inclusion of "tiered response requirements" in the Title V Permit for the Huntley Station does not support development and imposition of similar requirements for the boilers at the Waukegan Station. A basic question posed by such requirements is whether they are consistent with the basic requirements for a CAM Plan, i.e., that they work to provide a reasonable assurance of

¹⁵ 40 CFR 64.7(d) provides:

"(d) *Response to excursions or exceedances.* (1) Upon detecting an excursion or exceedance, the owner or operator shall restore operation of the pollutant-specific emissions unit (including the control device and associated capture system) to its normal or usual manner of operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions. The response shall include minimizing the period of any startup, shutdown or malfunction and taking any necessary corrective actions to restore normal operation and prevent the likely recurrence of the cause of an excursion or exceedance (other than those caused by excused startup or shutdown conditions). Such actions may include initial inspection and evaluation, recording that operations returned to normal without operator action (such as through response by a computerized distribution control system), or any necessary follow-up actions to return operation to within the indicator range, designated condition, or below the applicable emission limitation or standard, as applicable.

(2) Determination of whether the owner or operator has used acceptable procedures in response to an excursion or exceedance will be based on information available, which may include but is not limited to, monitoring results, review of operation and maintenance procedures and records, and inspection of the control device, associated capture system, and the process."

compliance. In this regard, it is unclear whether the "Level One" actions required for the Huntley boilers even constitute a response to an excursion or exceedance.¹⁶ Moreover, when an exceedance or excursion is identified, the CAM Plan approved by the permitting authority should not predetermine the source's response based on the magnitude of the occurrence. As confirmed by 40 CFR 64.7(d) (2), the adequacy of a source's response to an exceedance or excursion is to be evaluated by a regulatory authority on a case-by-case basis.^{17, 18}

Comment VI.A -

The Draft CAAPP Permit's Authorization of Exceedances During SSM Events Violates the Clean Air Act

The provisions of the draft revised CAAPP for periods of startup, shutdown, and malfunction (SSM) of emission units at the Waukegan Station are unlawful. They were unlawful when first adopted and have been made even weaker by the proposed changes to the permit. Collectively, the SSM provisions will effectively allow Midwest Generation to disregard virtually all existing SIP emission limitations for hours at a time during SSM events. The Illinois EPA should not provide explicit allowances for exceedances of SIP emission limitations during SSM periods, or in the alternative at least provide sufficiently stringent and specific conditions on these periods to truly minimize the unnecessary emission that may otherwise occur.

A key problem with the proposed SSM provisions in the permit is that SSM exemptions from SIP emission limitations as a category run contrary to USEPA's current view on allowing exceedances during SSM events, and to recent federal case law on the topic, because they undermine the protection of the national ambient air quality standards (NAAQS) and other fundamental requirements of the Clean Air Act. (e.g., *USEPA State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction*, (May 25, 2015)). In this regard, any exemptions to SIP emission limitations, for whatever reason, are contrary to the Clean Air Act and to USEPA's longstanding policy that SIP emission limitations must apply and be enforceable at all times. The Clean Air Act specifies that SIPs must include enforceable "emissions

¹⁶ Condition 72.2.II.2.a of the Huntley permit, addresses "Level One" actions and addresses certain actions that the source must take when "...the 24-hour or 168-hour baseline opacity is higher than normal and increased attention should be given to the operation of the boiler and the ESP performance."

¹⁷ The cited provisions of the Huntley permit also appear problematic as opacity values with two different averaging times are used, i.e., 24 and 168 hours, both of which would be longer than the compliance period of the applicable PM limit, i.e., 0.17 pound/mmBtu, pursuant to 6 NYCRR 227-1.2(b).

¹⁸ As a whole, the provisions of the Huntley permit cited by this comment would suggest that they were additional obligations taken on by a source in the context of settlement of an enforcement action, as they appear to go beyond those necessary for compliance with an applicable emission standard.

limitations," and further requires that these "emissions limitations" apply on a "continuous" basis. Clean Air Act Sections 110(a)(2)(A) and (a)(2)(C) and 302(k).¹⁹ Exceptions allowing sources to emit additional pollutants during SSM events by their operation prevent the "continuous" enforcement of emission limits. Thus, they conflict with the plain language requirement of Section 110(a)(2)(A) of the Clean Air Act, as defined by Section 302(k) of the Clean Air Act. Any exemptions also rob USEPA and the public of their enforcement power in violation of the enforcement provisions in Sections 113 and 304 of the Clean Air Act.

Exempting emissions also conflicts with the core purpose of the Clean Air Act. USEPA recognizes its "overarching duty under the [Clean Air Act] to protect public health through effective implementation of the NAAQS." USEPA Memorandum to Docket EPA-HQ-OAR-2012-0322, at 9. Startup, shutdown and malfunction events result in short-term releases of a large amount of pollution, including releases of sulfur dioxide and nitrogen oxides, as well as other toxic and carcinogenic pollutants, in amounts that are many times above the legal limits. See Environmental Integrity Project, *Gaming the System: How Off-the-Books Industrial Upset Emissions Cheat the Public Out of Clean Air*, at 5-8 (Aug. 2004). Though there is a paucity of data on excessive emissions events,²⁰ a 2004 study by the Environmental Integrity Project shows that excess pollution released during SSM events can actually exceed the "normal" annual amount of emissions that sources otherwise report.

In short, continuous and enforceable emission limitations are the only way to ensure protection of ambient air quality standards. As USEPA noted in its new SSM rule, "SIPs are ambient-based standards and any emissions above the allowable [ambient concentration] may cause or contribute to violations of the national ambient air quality standards." USEPA Memorandum to Docket EPA-HQ-OAR-2012-0322, at 9 (citing 1982 SSM Guidance). Continuous and enforceable limits also ensure that sources of emissions continue to have a strong incentive to operate using best practices and to invest in appropriate pollution controls and equipment. 78 FR 12,485.

The D.C. Circuit has held that any affirmative defenses whatsoever against enforcement of SIP emission limitations are inconsistent with the Act. *Natural Resources Defense Council v.*

¹⁹ Recent court decisions also have emphasized that SIP emission limitations must be continuous according to the plain language of the Clean Air Act. USEPA Memorandum to Docket EPA-HQ-OAR-2012-0322, at 4, n. 10 (Feb. 4, 2013) (citing *Sierra Club v. Johnson*, 551 F.3d 1019 (D.C. Cir. 2008) and *U.S. Magnesium, LLC v. EPA*, 690 F.3d 1157, 1160 (10th Cir. 2012)).

²⁰ A 2012 report from the Louisiana Bucket Brigade concluded that "[o]ver 20% of reports across all refineries contain no information about the accident, what was released, how much, what caused the accident and what will be done to prevent it in the future." Louisiana Bucket Brigade, *Common Ground IV*, at 1 (2012).

E.P.A., 749 F.3d 1055, 1063 (D.C. Cir. 2014).²¹ In response to this ruling, USEPA also has made clear the unlawfulness of allowing unenforced, unrestricted emissions during SSM in its new SSM rule. In that rule, USEPA states that emission limits apply at all times, including SSM, and no affirmative defenses to enforcement may be employed. USEPA, *State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction*, (May 25, 2015, published in the Federal Register on June 12, 2015, 80 FR 33,840).

The revised draft CAAPP permit would violate USEPA's updated SSM requirements in several ways. First, Condition 7.1.3(c) would grant Midwest Generation the authority to continue operating the coal-fired boilers at the Waukegan Station during periods of malfunction despite emissions exceedances, and provides a corresponding affirmative defense to injunctive relief for exceedances during those periods. To be consistent with USEPA's new SSM rule, this condition should not be included in the revised CAAPP permit.

Second, contrary to USEPA's new SSM rule, Condition 7.1.3(b) of the revised draft permit would create a complete bar to enforcement of exceedances during periods of startup, granting Midwest Generation authority to exceed its SIP emission limitations during startup of a boiler. This condition should also not be included in the CAAPP permit for the Waukegan Station.

Third, even assuming an affirmative defense to penalties were lawful (which it is not, as discussed later), the permit would run contrary to published USEPA standards for determining when a source may be eligible for an affirmative defense to statutory penalties. USEPA has published recommended criteria delineating when a source may qualify for an affirmative defense to statutory penalties. See Steven A. Herman and Robert Perciasepe, USEPA, *State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown*, at 3-4 (Sep. 20, 1999) ("USEPA 1999 Policy"). Those criteria include a test to determine if an event qualifies as a malfunction, which provides that malfunctions must not be part of a pattern or stem from an avoidable event, and must be resolved as quickly as possible while minimizing impacts on air emissions (USEPA 1999 Policy, p. 3-4). USEPA also provides that excess emissions during startup

²¹ In April of 2014 in *Natural Resources Defense Council v. EPA*, the D.C. Circuit struck down the affirmative defense provisions in regulations allowing cement plants to avoid monetary liability for violations of emission standards during unavoidable malfunctions. In so holding, that court noted that Sections 304 and 113 of the Clean Air Act, the provisions for citizen suits and civil penalties, make the question of what civil penalties, if any, are appropriate in a citizen suit enforcement action a question for district courts to decide, not USEPA. The court thus found that USEPA had no authority to create the affirmative defense.

must not be part of a pattern or stem from an avoidable event. (USEPA 1999 Policy, p. 5-6). The draft revised CAAPP permit for the Waukegan Station would deviate significantly from these criteria, opening up the possibility that it might be improperly granted an affirmative defense. For instance, the permit would authorize continued operation of both the coal-fired boilers and coal handling equipment during malfunctions where "necessary to provide essential service or to prevent injury to personnel or severe damage to equipment." See Condition 7.1.3(c)(i) and 7.2.3(b)(i). The draft revised CAAPP permit includes no provision requiring that malfunctions not be part of a pattern or stem from an avoidable event, or that they be resolved as quickly as possible while minimizing impacts on air emissions. Similarly, the permit's authorization to exceed emission limits during startup requires only that the applicant take "all reasonable efforts ... to minimize startup emissions, duration of individual startups and frequency of startups" (and the revised draft CAAPP permit implements these requirements to the letter of the SIP). See Condition 7.1.3(b)(i). Nowhere does the permit require that any exceedances during startup not be part of a pattern or stem from an avoidable event.

Although Illinois EPA's holdings reflect existing provisions in Illinois' current SIP with respect to SSM events, in the SIP Call, USEPA has already found that Illinois's SSM provisions are inconsistent with the Clean Air Act:

The EPA believes that the inclusion of the complete bar to liability, including injunctive relief, the availability of the defense for violations during startup and shutdown, the burden-shifting effect, and the insufficiently robust qualifying criteria in Ill. Admin. Code tit. 35 § 201.261, Ill. Admin. Code tit. 35 § 201.262, and Ill. Admin. Code tit. 35 § 201.265, are substantial inadequacies and render these specific SIP provisions impermissible.
78 FR 12514-15.

Furthermore, USEPA has subsequently revised its SIP Call to be consistent with *Natural Resources Defense Council v. EPA*, issuing a supplemental notice of proposed rulemaking that explicitly held that any defenses for emission exceedances during SSM events is unlawful:

[The Illinois SIP] create[s] an impermissible affirmative defense for violations of SIP emission limits. These provisions would operate together to limit the jurisdiction of the federal court in an enforcement action and to preclude both liability and any form of judicial relief contemplated in Clean Air Act sections 113 and 304.
State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction;

Supplemental Proposal to Address Affirmative Defense Provisions in States Included in the Petition for Rulemaking and in Additional States: Proposed Rule, 79 FR 55920 (Sept. 17, 2014).

On May 22, 2015, USEPA finalized these changes, revising its guidance to make clear that affirmative defense provisions are not permissible in SIPs; and issuing SIP calls directing 23 statewide and local jurisdictions, including Illinois, to remove affirmative defense provisions from their SIPs.²²

Response:

This comment does not support the changes to the CAAPP permit for the Waukegan Station that it recommends. As observed by this comment, the appropriate approach to SSM events for SIP emission limitations is a subject that USEPA is now addressing in its SSM Rule or "SIP Call." As clearly stated by USEPA in the SIP Call, provisions of approved SIPs are not altered by the SIP call. Accordingly, the CAAPP permit for the Waukegan Station properly addresses and implements the provisions of Illinois' current rules related to startup and malfunction breakdown events.

When the EPA issues a final SIP call to a state, that action alone does not cause any automatic change in the legal status of the existing affected provision(s) in the SIP. During the time that the state takes to develop a SIP revision in response to the SIP call and the time that the EPA takes to evaluate and act upon the resulting SIP submission from the state pursuant to CAA section 110(k), the existing affected SIP provision(s) will remain in place.

80 FR 33840 (June 12, 2015)

The SIP Call requires appropriate rulemaking by affected states and jurisdictions, not source-by-source actions during permitting. In this regard, as discussed in this comment, USEPA has reconsidered the provisions that address the potential for "excess emissions" during SSM in the SIPs of a number of states and local jurisdictions, including Illinois' SIP. USEPA has now found that many of these existing SIP provisions, including the relevant provisions of Illinois rules dealing with startup and malfunction and breakdown events, which USEPA had previously approved, are inconsistent with provisions of the CAA.²³ Accordingly, USEPA has issued the SIP Call, which requires

²² USEPA, *State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction*, May 25, 2015 (published in the Federal Register June 12, 2015).

²³ Illinois' SIP, 35 IAC 201.149, prohibits startup (S) of an emission unit or continued operation of an emission unit during malfunction or breakdown (MB) if such operation would cause a violation of an applicable state emission standard absent express permit authorization. Illinois' process for addressing compliance with state emission standards during SMB is set forth in 35 IAC 201 Subpart I and has two steps. The first step consists of obtaining authorization by means of a permit application to make a future claim of SMB. The second step involves making a viable claim of SMB. For startup, this consists of showing that all reasonable efforts have been made to minimize emissions from the startup event, to minimize the duration of the event, and to minimize the frequency of such events. For MB, this consists of showing that

those affected states and local jurisdictions to undertake rulemaking to appropriately revise their SIPs so that SSM events are appropriately addressed.²⁴

Moreover, the USEPA does not mandate in the SIP Call that the current short-term emission limitations in the affected SIPs be made applicable at all times, as implied by this comment. Rather, the SIP Call requires that SIPs be revised so that they appropriately address SSM events. USEPA recognized that a number of different approaches may be possible and appropriate to address various types of emission units and their possible circumstances. One possible approach recognized by the SIP Call is the adoption of "alternative emission limitations" for SSM events.²⁵ The adoption of alternative emission limitations, as contemplated by the SIP Call, would be a task that would be carried out through rulemaking. In Illinois, this rulemaking would involve a proceeding before the Pollution Control Board in which the Illinois EPA, the affected sources and interested members of the public could all participate. In other words, while it is correct that certain provisions of Illinois' SIP dealing with SMB events have now been found to be inconsistent with the Clean Air Act, the difficulty is with those regulatory provisions. As such, the proper response is rulemaking to correct the now-identified flaw in these provisions that were the result of earlier rulemaking. The SIP call will not affect the requirements of this CAAPP permit until after Illinois acts to develop and put into place revisions to Illinois' SIP that respond to the SIP call.²⁶

continued operation was necessary to prevent injury to persons or severe damage to equipment, or was required to provide essential services. Inherent in this showing, is the obligation to show that operation and excess emissions occurred only to the extent necessary.

Midwest Generation sought SMB authorizations for certain units at the Waukegan Station. The Illinois EPA reviewed these requests and, as appropriate, granted authorizations in the CAAPP permit to make claims of SMB. These authorizations do not equate to an "automatic exemption" from otherwise applicable state standards. These authorizations are fully consistent with long standing practice in Illinois for permitting and enforcement. In particular, the nature of the coal-fired utility boilers is such that certain excess emissions may occur during SMB that a source cannot reasonably avoid or readily anticipate. However, the source may be held appropriately accountable for any excess emissions that should not have occurred regardless of the authorizations in the CAAPP permit related to SMB. In summary, the provisions in the CAAPP permit related to SMB do not translate into any advance determinations related to actual occurrences of excess emissions. Rather, they provide a framework whereby Midwest Generation is provided with the ability to make a claim of SMB, with the viability of any such claim subject to further review.

²⁴ Parallel with its SIP Call related to SSM events and its work with affected states and other jurisdictions on revisions to their SIPs, USEPA is also committed to undertaking rulemaking to revise a number of emission standards that it adopted. These standards must also be revised so they appropriately address emissions during SSM.

²⁵ For purposes of the SIP Call, an alternative emission limitation is

"... an emission limitation in a SIP that applies to a source during some but not all periods of normal operation (e.g., applies only during a specifically defined mode of operation such as startup or shutdown). An alternative emission limitation is a component of a continuously applicable SIP emission limitation, and it may take the form of a control measure such as a design, equipment, work practice or operational standard (whether or not numerical)."

80 FR 33842 (June 12, 2015)

²⁶ As with many USEPA rulemaking related to the Clean Air Act, the SIP Call is the subject of an appeal filed with the U.S. Court of Appeals in the District of Columbia, though it is too early to determine what effect this lawsuit may have on the timing of the effectiveness of the SIP Call.

It is also noteworthy that the SIP call is not based on a quantitative evaluation by USEPA of the impacts on ambient air quality of extra emissions during SSM events. Rather, the SIP call is based on a reassessment of the language of the Clean Air Act by USEPA, as guided by various court decisions related to SSM events.²⁷ In addition, this comment has not provided any information to support the claim that the emissions of coal-fired power plants associated with SSM events are significant. The study cited by this comment to support this claim, *Gaming the System: How Off-the-Books Industrial Upset Emissions Cheat the Public Out of Clean Air*, does not address coal-fired power plants.

As a final point, notwithstanding representations made in this comment, Illinois SIP contains no special provisions dealing with applicability of SIP emission limitations during shutdown of emission units. Accordingly, changes to Illinois' SIP related to shutdown of emission units are not actually required as a result of the SIP Call.²⁸

Comment VI.A. -

Extra from a footnote

In order to ensure that the CAAPP permit for the Waukegan Station is consistent with Clean Air Act requirements, this permit must allow the public to hold Midwest Generation directly accountable when emission units at the station emit excess emissions. For this reason, the CAAPP permit should clarify that any finding in the permit that emission exceedances qualify for consideration under the provisions of Illinois SIP for SSM, as implemented through this CAAPP permit does not preclude either USEPA enforcement or a citizen suit pursuant to the Clean Air Act.

Response:

The issued CAAPP permit does not act to preclude either USEPA

²⁷ In the SIP Call, USEPA addressed the implications of the SIP Call for air quality in its response to certain comments that opposed the SIP Call because USEPA had not demonstrated that the provisions at issue in the SIP Call have contributed to specific violations of air quality standards or caused harm to public health or the environment.

As explained in the February 2013 proposal, the SNPR [Supplemental Notice of Proposed Rulemaking] and this document, the EPA does not interpret its authority under section 110(k)(5) to require proof that a deficient SIP provision caused a specific violation of the NAAQS at a particular monitor on a particular date, or that a deficient SIP provision undermined a specific enforcement action. Section 110(k)(5) explicitly authorizes the EPA to make a finding that a SIP provision is substantially inadequate to "comply with any requirement of" the CAA, in addition to the authority to do so where a SIP is inadequate to attain and maintain the NAAQS or to address interstate transport. In light of the court's decision in *NRDC v. EPA*, the EPA has reexamined the question of whether affirmative defenses are consistent with CAA requirements for SIP provisions. As explained in this action, the EPA has concluded that such provisions are inconsistent with the requirements of section 113 and section 304.

80 FR 33859 (June 12, 2015)

²⁸ It should also be recognized that the challenge of permit conditions made by this comment does not fall within the purview of revisions being made in this proceeding to resolve the appeal of the initial CAAPP permit. Effectively, this comment challenges the validity of certain in the initial CAAPP permit that implemented Illinois rules for startups and malfunction/breakdown events. This proceeding is governed by the applicable requirements of Title V and state CAAPP program, which act to limit the scope of review to the revisions that would be made to the CAAPP permit.

enforcement or a citizen suit pursuant to the Clean Air Act as related to emission exceedances during startups and malfunction or breakdown events at the Waukegan Station. At the same time, it would not be proper for this permit to suggest, as requested by this comment, that the permit could act to alter relevant provisions of the current Illinois SIP that address emissions exceedances during startups and malfunction and breakdown events.

Comment VI.B.1 -

The Proposed Changes to SSM Reporting Requirements Would Make It Harder to Enforce the Limits - Reporting Times for Malfunctions

Another problem with the proposed SSM provisions in the draft revised CAAPP permit is that the changes to the proposed reporting requirements will make it more difficult for Illinois EPA and the public to learn about, much less effectively respond to, emissions exceedances. These changes weaken Midwest Generation's reporting requirements around SSM events in often inexplicable ways that are inconsistent with the Title V permit program's purpose of assuring compliance with the Clean Air Act.

The draft revised CAAPP permit would reduce reporting requirements without providing sufficient basis for these decisions. In particular, the proposed revisions to Conditions 7.1.10-3(a)(i), 7.2.10(b)(i)(A), and 7.3.10(b)(i)(A) would increase the time before Midwest Generation must immediately report exceedances of the 30 percent opacity standard for most of the station's equipment (including the boilers and all coal processing or handling equipment), by 18 minutes, or a more than 50 percent increase in time. The revision to Condition 7.4.10(b)(i)(A) would double the amount of time Midwest Generation has to immediately report opacity exceedances for fly ash handling equipment, from 24 to 48 minutes. All of these changes would reduce the role of Illinois EPA to provide oversight of and respond to significant pollution exceedances. The Illinois EPA should reconsider these planned changes to ensure that opacity exceedances continue to be dealt with quickly and with sufficient oversight.

Response -

The Illinois EPA does not consider the additional time for implementing the immediate notification requirement to be an impediment to its role in addressing and exercising oversight for opacity exceedances during malfunction events. As explained in the Statement of Basis, the Illinois EPA deemed the additional reporting time necessary to correct mistaken assumptions in the timeframe originally selected for the notification period. See, *Statement of Basis*, page 46. The explanation further noted that the added time would pose no effect on how the Illinois EPA would respond to the notifications. This is because the window of time for each notification period is only incrementally longer than before and, ultimately, neither adds nor detracts from any subsequent evaluation performed by the Illinois EPA in its review

of excess emissions.

Comment VI.B.2 -

The Proposed Changes to SSM Reporting Requirements Would Make It Harder to Enforce Limits -Reporting Times for Startups

The proposed changes to reporting for startups are problematic. The initial CAAPP permit established heightened reporting requirements for startups of the coal-fired boilers at the Waukegan Station that would take longer than 6 hours on the basis that even if the boilers were not operating at full capacity within 6 hours at least it should be able to reliably operate pollution control technologies. The revised draft permit would increase the time before Midwest Generation has to explain long startup times *more than three-fold* to 20 hours for Boiler BLR 7 and to 23 hours for Boiler BLR 8, and in doing so, removing any of the heightened reporting requirements for startups lasting longer than 6 hours. See Condition 7.1.9(g)(ii)(C). Illinois EPA justifies this decision in its statement of basis by claiming that "typical startups of [Waukegan-style] boilers can last as long as 28 hours for the first boiler and 8 hours for a second boiler." (Statement of Basis at 22.)

Once again, this reduced reporting requirement will reduce Illinois EPA's future ability to ensure that Midwest Generation avoids inefficient startups and excess emissions during those periods for the coal-fired boilers at the Waukegan Station. This is problematic because although the permit includes two conditions that apply during start up (see discussion of Condition 7.1.3(b)(ii) below), those conditions will not necessarily ensure compliance with relevant emission standards during the startup period. Although Midwest Generation must explain exceedances in its reporting, such exceedances are nonetheless allowed, and so there remains a disconcerting possibility that Midwest Generation could claim the startup exemption for exceedances over a 20- or 23-hour period on a regular basis, without any efforts to reduce the start-up period. Especially as compared to a 6-hour expected startup period, this change could have huge environmental impacts. As such, we urge Illinois EPA either to reconsider this reporting change, or to more carefully delineate the circumstances under which exemptions apply during different stages of an up-to-23 hour startup process.

Response:

As with the preceding comment, the Illinois EPA disagrees that extending the time period for a typical startup that is used to as a trigger for more detailed recordkeeping acts to diminish the ability of the Illinois EPA to address excess emissions that occur during startups. Moreover, the comment misconstrues the purpose of Condition 7.1.9(g). This condition was not designed to restrict the duration of

startup or incentivize minimization of the duration of startups.²⁹ Rather, its purpose is to obtain additional information about startup events that are "out of the ordinary" or atypical. If a given startup takes longer than normal, Midwest Generation must record the circumstances and any additional emissions resulting from the startup. As explained in the Statement of Basis, Condition 7.1.9(g) in the initial permit was based on an incorrect understanding by the Illinois EPA of the duration of a normal startup of a coal-fired boiler at the Waukegan Station. As a result, this condition would have treated all startups as "out of the ordinary." This has necessitated the revision to this condition to reflect the actual duration of normal startups of boilers at the Waukegan Station.

Comment VI.C -

The Permit Does Not Provide Sufficient Guidance to Control Unnecessary Exceedances during SSM Events

Another problem with the SSM provisions in the CAAPP permit is that they provide little guidance as to what exceedances are justified during different stages of SSM events. This raises the concern that Midwest Generation could take advantage of these periods to regularly violate SIP emission limitations that apply to various emission units at the Waukegan Station. The permit would not provide guidance for what sort of startups or malfunction events might justify exceedances. For startups, this is what makes the extension of "standard" startup times to 23 hours so concerning. For malfunctions, the permit does not describe what sort of malfunctions are acceptable, in particular failing to explain what "essential service" would justify continuing to operate an emission unit during a malfunction.

National practice generally establishes clear guidelines for operation, which are designed to ensure sources are truly minimizing emissions from boilers as they warm up. For instance, USEPA's recent Mercury and Air Toxics Standards (MATS), 40 CFR 63 Subpart UUUUU, requires that coal-fired utility boilers "engage and operate [] PM controls as soon as possible and no later than 1 hour []after [initiating use of primary fuels]. After engagement of PM controls, EGUs are required to maintain clean fuel use to the maximum extent possible until the end of startup (i.e., 4 hours after the start of generation of electricity or

²⁹ Midwest Generation's obligation to minimize emissions during startups is addressed elsewhere in the CAAPP permit. For the coal-fired boilers, Condition 7.1.3(b)(i) provides that Midwest Generation is not relieved from the continuing obligations to demonstrate that all reasonable efforts are made to minimize startup emissions, duration of individual startups and frequency of startups. Condition 7.1.3(b)(ii) further provides that Midwest Generation must conduct startups of the boilers in accordance with written procedures that are specifically designed to minimize emissions from startups.

useful thermal energy)."^{30, 31} In contrast to this tailored approach, the proposed permit would establish one monolithic startup period for each boiler, defined as the period "from the initial firing of fuel in an affected boiler to stable operation of the corresponding EGU at load," during which time a boiler is authorized to emit additional particulate matter and carbon monoxide. See Condition 7.1.9(g)(ii)(C).

The permit does include two substantive operational requirements for startups that will act to lower emissions. It requires the "[u]se of auxiliary fuel burners to heat the boiler prior to initiating burning of coal," which would reduce the amount of coal burned before a boiler reaches full operation. It also requires that ESPs, the particulate control devices, be energized "as soon as this may be safely accomplished without damage or risk to personnel or equipment." See Condition 7.1.3(b)(ii)(A) and (B). While these measures will act to reduce emissions during startup, they are not sufficiently specific to enable enforcement. For instance, the ESP requirement does not include any guidance for how to determine when the ESP can be started safely. The Illinois EPA should provide more enforceable guidelines for these control requirements, in particular explaining when and for how long during the startup process these controls might be expected to be put in place, and what amount of time (operating the auxiliary fuel burners or waiting to activate the ESP) would constitute a violation.

Response:

This comment does not justify the changes to the CAAPP permit that are requested. This comment again confuses the stated duration for a normal startup for the coal-fired boilers, which is only relevant for recordkeeping that is required, with the actions that Midwest Generation must take to minimize emissions during startups of these boilers. With respect to actions taken during startup to minimize particulate emissions, this comment misrepresents the requirements of the MATS rule, describing only one of the options that is available for startup. Alternatively, a source may calculate the emission rate for each hour of startup, collecting appropriate data during startup with the continuous monitoring systems. With respect to the timing of the specific measures required by the permit, i.e., use of auxiliary fuels and energization of the ESP, these measures are governed by the introductory language to the relevant condition, Condition 7.1.3((b)(ii). This condition requires that these measures shall

³⁰ USEPA, *Reconsideration of Certain Startup/Shutdown Issues: National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units*, 79 FR 68777 (Nov. 19, 2014).

³¹ A 2013 USEPA assessment shows a large variance in how long coal-fired utility boilers take to generate electricity after starting combustion of coal. However, it concludes that SO₂ and NO_x emissions of coal-fired utility boilers can begin to be controlled within a few hours of starting electrical generation. Peter Kokopeli, Jeremy Schreifels & Reynaldo Forte, USEPA Office of Air and Radiation, *Assessment of Startup Period At Coal-Fired Electric Generating Units* (June 17, 2013).

be implemented so as to minimize emissions from startups.

Incidentally, the additional provisions in the CAAPP permit that are generally requested by this comment are in direct contradiction to earlier comments by this commenter. The earlier comments argued that no exceedances of state emission standards during SSM should be condoned by the CAAPP permit for the Waukegan Station. In this comment, further specificity is now requested on exceedances during SSM that should be condoned. Moreover, earlier comments requested that the CAAPP permit explicitly provide that it does not preclude enforcement by parties other than the State of Illinois. This comment now requests that provisions be included in the permit that would act to impede the success of such enforcement. However, as already discussed, the Illinois EPA believes it would be improper to include such provisions in the body of the permit as it would be contrary to the provisions of the relevant states rules addressing emission exceedances during startups and malfunction events. It would also potentially hinder enforcement by the State of Illinois for emission exceedances during such periods.

Comment VII.A -

The CAAPP Permit Should be Revised to Reduce the Length of Time Before PM Emissions Testing Is Required

The revised CAAPP permit would remove and weaken many inspection requirements from the initial CAAPP permit. Inspections are a crucial element of ensuring that permit holders demonstrate reasonable assurance of compliance with all state and federal emission standards. Otherwise, reduced inspection standards create the risk of unsafe operating conditions by either perpetuating issues that already exist, or allowing preventable issues to develop.

In particular, draft revised Condition 7.1.7(a)(i) would increase the length of time following effectiveness of the permit before Midwest Generation must conduct testing for the PM emissions of the coal-fired boilers. The initial CAAPP permit required these tests be conducted 180 days after the effectiveness of the condition; however, the draft revised permit would double this time to one year following the effectiveness of the condition. PM emissions testing is crucial to ensure that the coal-fired boilers comply with the applicable state emission standard for PM. Doubling the amount of time before PM emission testing must be conducted raises the risk that the boilers operate with excess emissions for an additional six months.

Response:

Based on the past testing that has been conducted for the coal-fired boilers at the Waukegan Station, it should not be expected that future testing will show violations of the PM emission standard that current

applies to these boilers.³² The time to complete the initial PM testing of the coal-fired boilers pursuant to this permit was changed from 180 days to no later than one year after the condition becomes effective to provide Midwest Generation with sufficient time to coordinate necessary training and scheduling to implement all of the new requirements imposed by the permit once it is issued. This resolved the challenge to this condition in Midwest Generation's appeal of the initial CAAPP permit.

In fact, since Midwest Generation has requested conditional approval of the CAM Plan for PM emissions of the coal-fired boilers, testing of the boilers for PM must be completed within 120 days of the issuance of the revised permit.

Comment VII.B -

Illinois EPA Should Revise the CAAPP Permit to Reinstate the Previous Trigger for PM Emissions Testing When Operating at Higher Loads

The draft revised permit would weaken the load-based trigger for requiring further PM emissions testing of a coal-fired boilers if it operates at a load higher than the load at which testing was most recently conducted. See Condition 7.1.7(a)(ii). The initial CAAPP permit required testing when loads were more than two percent greater than the load at which testing occurred. However, under the revised CAAPP permit, the load would need to be the greater of 10 Megawatts or five percent higher than the load at which testing was last conducted to trigger further PM emissions testing. This would be a more significant departure from testing conditions than accommodated by the initial permit. The original trigger should be retained.

The draft revised permit also extends the duration of time during which the coal-fired boilers could operate at this higher load—from 30 hours to 72 hours per quarter—before triggering the need to conduct further PM emissions testing. Allowing a boiler to operate at a higher load than the level at which testing was conducted for an aggregate of three days before triggering further emissions testing would jeopardize Midwest Generation's obligation to assure compliance with PM standards.

The Statement of Basis justifies these alterations by stating that the original criteria "were not appropriately tailored" to the coal-fired boilers at the Waukegan Station, and "would *potentially* have required that testing for PM emissions be conducted in circumstances in which it would not have been warranted." (Statement of Basis at 18) (emphasis added). However, it does not provide any additional information that might help explain this decision. Accordingly, how were the criteria not

³² The PM tests for these coal-fired boilers are important as they will provide authoritative data for the current emission rates of the boilers when operating normally. They will also provide information on the margin of compliance, i.e., the difference between the actual emission rate and the allowable emission rate.

originally appropriately tailored to these boilers? Why would testing under the original criteria potentially be required to be conducted in circumstances in which it would not be warranted?

Response: _

The original criteria was not appropriately tailored to the coal-fired boilers because the Illinois EPA did not consider the effect of seasonal weather conditions on the maximum load at which the boilers can be operated at different times of the year. The capacity is highest in the winter when the air is coldest and densest and the temperature of the water in the cooling system is lowest. The capacity is lowest in the summer when the air and water are warmer. The role of the independent system operator in managing the level at which boilers may be operated during the period of testing was also not considered. The presumption underlying the original criteria was that PM emission testing could always be readily conducted very near the greatest load at which the boilers would ever need to be operated over the course of a year. In fact, because of the above considerations PM testing may only be able to be conducted at loads that are near to the greatest load at which the boilers would need to be operated over the course of a year.

The original condition would potentially have required further PM testing in circumstances in which it would not be warranted because, the purpose of the condition was to assure that testing is conducted when the boilers are operating in the maximum load range.

Comment VII.C -

CO and PM Emissions Testing Should Be Performed at the Affected Boilers' Maximum Operating Loads

Condition 7.1.7(b)(i) of the initial CAAPP permit required CO and PM emissions testing to be performed at the maximum operating loads of the affected boilers. However, the draft revise permit would only require that measurements be performed at 90 percent or better of the "seasonal" maximum operating loads. First, what is meant by the word "seasonal" in this condition is unclear. Second, CO and PM emissions should be measured under operating conditions that would lend themselves to the highest level of emissions. Otherwise, there might be a spike in emissions between those reflected in testing and those that occur when the affected boilers are operating at maximum operating loads. Thus, the permit should provide for CO and PM emissions testing at maximum operating loads to ensure that authorities are aware of the maximum emissions levels that might occur.

Response:

The revised condition requires emission testing of the coal-fired boilers to be conducted while they are operating in the maximum load range while also recognizing that the capacity of utility boilers varies slightly based on the season of the year, as already discussed. The differences in capacity are relatively small but Midwest Generation was concerned that this seasonal difference in the capacity

of the boilers be recognized in the provisions of the CAAPP permit. In actual practice, given the relatively small variation in boiler capacity, this is not expected to affect the representativeness of test results.

Comment VII.D -

Midwest Generation Should Not Determine CO and PM Emissions Compliance by Averaging Test Runs

Condition 7.1.7(b)(iii)(B) of the draft revised permit allows Midwest Generation to determine compliance by using the average of three valid test runs when calculating measurements of CO and PM emissions for the coal-fired boilers. This averaging masks individual spikes in emissions, and therefore could easily hide emission violations. The Statement of Basis explained that this provision was changed to make its language consistent with similar provisions for coal handling equipment and fly ash equipment in Conditions 7.2.7(b)(ii)(B) and 7.4.7(b)(ii)(B), respectively. (Statement of Basis at 67). However, there is no reason that these conditions need to be consistent, especially considering the very different emissions profiles and operations of coal handling equipment compared to the boilers. Testing requirements for CO and PM emissions from coal-fired boilers, coal handling equipment, and fly ash equipment should be completely independent of one another. The permit should not alter testing procedures that understate peaks in CO and PM emissions solely to unify language across sections of the permit.

Response:

The proposed revision to Condition 7.1.7(b)(iii)(B) would make clear that when a stack test is conducted, the results of valid test runs must be averaged to determine compliance with emission limits. This is well-established practice for emissions testing as recognized by 40 CFR 50.8(f). It is specifically provided for in Illinois by 35 IAC Part 283. This approach to emission testing would be required regardless of whether this condition was in the permit or not. Since the revised language was included in Conditions 7.2.7(b)(ii)(B) and 7.4.7(b)(ii)(B), it was also added to Condition 7.1.7(b)(iii)(B) for completeness and clarity. Particularly given there are exceptions in 35 IAC Part 283 that would require the use of one stack test run rather than an average of three runs. This clarification simply makes it clear that none of these exceptions apply and no confusions could be imparted because of the absence of such affirmation. Other changes would not be made to the conditions of the permit discussed in this comment.

Comment VII.E -

The CAAPP Permit Should be Revised to Reduce the Lapse of Time Between Opacity Observations Conducted Under Reference Method 9

The draft revised permit would significantly extend the amount of time between opacity observations conducted in accordance with

Reference Method 9 under Conditions 7.2.7(a)(i)(A) - (B), 7.3.7(a)(i)(A) - (B), and 7.4.7(a)(i)(A) - (B). These observations previously were required to be conducted within three months of permit issuance, and thereafter at least annually. However, under the revised draft permit, these observations must take place no more than two years after the effectiveness of the condition, and triennially thereafter. In justifying this change, Illinois EPA stated that requirements for regular inspections of the affected units pursuant to Conditions 7.2.8, 7.3.8, and 7.4.8 allowed for opacity observations to be conducted at least annually. (Statement of Basis at 36 - 37). However, these opacity observations pursuant to Conditions 7.2.8, 7.3.8, and 7.4.8 are not required to be in accordance with Reference Method 9. The permit should retain the more frequent opacity observations that originally would have been required.

Response:

These conditions were appropriate as drafted. Midwest Generation is provided the option of using Method 22 because some of the equipment to be observed should not have any visible emissions. For such units, Method 22 is an appropriate test method for such observations.

The proposed revisions to Conditions 7.2.7(a)(i)(A) - (B), 7.3.7(a)(i)(A) - (B), and 7.4.7(a)(i)(A) - (B) regarding frequency on Reference Method 9 opacity observations was combined with the proposed revisions to Conditions 7.2.8, 7.3.8, and 7.4.8 regarding periodic inspections of emission units. The end result of these proposed revisions is that that all affected operations or process addressed by these sections of the permit must be observed for visible emissions on an annual basis. The source is allowed to use Reference Method 22 for these observations, which do not require a certified observer, however, the source must complete an opacity observation in accordance with Reference Method 9 within one week of observing any visible emissions which cannot be corrected within two hours of completing an observation in accordance with Reference Method 22. The revisions to Conditions 7.2.7(a)(i)(A) - (B), 7.3.7(a)(i)(A) - (B), and 7.4.7(a)(i)(A) - (B) ensure that an opacity observation must be completed in accordance with Reference Method 9 at least every 3 years. Illinois EPA believes this proposed monitoring strategy is appropriate for the affected operations and processes defined in Sections 7.2, 7.3 and 7.4 of this permit and will not be making any additional revisions to the permit conditions noted in this comment.

Comment VII.F -

The CAAPP Permit Should Increase the Frequency of Combustion Evaluations for the Coal-Fired Boilers and the Natural Gas-Fired Boiler

Revised Condition 7.1.6(a) reduces the nature and frequency of combustion evaluations for the coal-fired boilers. The permit previously required Midwest Generation to conduct combustion

evaluations of these boilers quarterly, and the revised draft cut this frequency to only semi-annually for the coal-fired boilers. Doubling the interval between evaluations risks a several-month delay in detecting any combustion issues with the boilers.

Furthermore, the language of the condition no longer requires Midwest Generation to take preventative measures in response to combustion evaluations, and includes only language making adjustments in response to the evaluations voluntary. According to the Statement of Basis, Midwest Generation claimed that "its ability to make 'adjustments and preventative and corrective measures' [for the coal-fired boilers] was constrained by the bounds of technical feasibility." (Statement of Basis at 17). However, the Statement of Basis does not explain why this was the case. The proactive approach of taking preventative measures would eliminate problems with the boilers before they start. Otherwise if foreseeable problems do occur, Midwest Generation would have the discretion to merely react to them after the fact. It would be wholly inappropriate for Midwest Generation to continue to operate the boilers if Midwest Generation had knowledge that there was a need for preventative maintenance. Therefore, Condition 7.1.6 should be revised to require quarterly combustion evaluations of the boilers and mandatory preventative measures in response to evaluations.

Response:

This comment does not show that more frequent combustion evaluations are appropriate. In addition the comment merely highlights the flaw with these conditions in the initial permit that led them to being appealed.

Comment VIII -

Revisions to the Permit Do Not Provide Adequate Recordkeeping
(1st to 3rd para.)

In draft Condition 7.1.9(c)(ii), the Illinois EPA proposes to delete the requirement to identify the "upper bound of the 95% confidence interval (using a normal distribution and 1-minute averages) for opacity measurements from the boiler[s], considering an hour of operation, within which compliance with [PM emission limits] is assured" Illinois EPA also proposes to delete the corresponding recordkeeping requirement in Conditions 7.1.9(c)(iii)(B), that Midwest Generation keep records for "[e]ach hour when the measured opacity of an affected boiler was above the upper bound"

The revised Conditions do not meet the Title V/Part 70 requirement that monitoring must provide data representative of the source's compliance with the underlying permit limits, 40 CFR 70.6(a)(3)(i)(B), (c)(1). As USEPA has determined numerous times in orders, where opacity is used as a parameter to ensure compliance with a PM limit, the opacity range correlating to

compliance with the PM emission limit must be "set as enforceable limits" in the permit. *In the Matter of Tampa Electric Co., F.J. Gannon Station*, Objection to Proposed Part 70 Operating Permit No. 0570040-002-AV at 8 (Sept. 8, 2000); see also *In the Matter of the Huntley Generating Station*, EPA Administrator Order at 21 (July 31, 2003) ("the title V permit must include a specific opacity limit [in the PM limit sections of the permit] that would correlate to the PM limit [in the permit]."); *In the Matter of Dunkirk Power LLC*, EPA Administrator Order at 20 (July 31, 2003) (holding that operating outside of the parameter range constitutes a violation of the permit); *In the Matter of Midwest Generation, LLC, Waukegan Generating Station*, EPA Administrator Order at 20 (Sept. 22, 2005) (requiring that opacity used as a surrogate for PM to satisfy Part 70 monitoring requirements must "include a correlation between th[ose] measurements and compliance with the PM emission limitations."). In fact, USEPA has required that the correlation be set so that it provides direct evidence of compliance or non-compliance with the permit. *In the Matter of Dunkirk Power LLC*, EPA Administrator Order at 19-20 ("Once operating ranges have been established for the ESP operating parameters, operating the ESP outside of any of these ranges would constitute a violation of the title V permit." (emphasis added)). As a result, the permit fails to meet the requirement that it include "monitoring ... requirements sufficient to assure compliance with the terms and conditions of the permit." *In the Matter of Midwest Generation, LLC, Waukegan Generating Station*, EPA Administrator Order at 19 (citing 40 CFR 70.6(a)(3)(i)(B) and 70.6(c)(1)). The permit must be revised to include an enforceable opacity limit corresponding to violation of PM emission limits, set no higher than the 30 percent opacity limit provided for in the Illinois SIP. While 35 IAC 212.124(d)(2)(A), a provision in Illinois SIP, already provides that a violation of the 30 percent opacity limit in 35 IAC 212.123 presumptively constitutes a violation of the applicable PM standard, a lower limit for opacity may be necessary to ensure compliance with the PM standard.

With the proposed revision to Condition 7.1.9(c)(iii)(B), Midwest Generation would only be required to keep records of the date, time, measured opacity, operating condition, and other information of "three hour block averaging period[s]" (emphasis added) with average opacity above 30 percent. This is further insufficient to ensure compliance with the applicable PM limit. Again, the applicable PM limit is based on an hourly average. 35 IAC 212.202. Midwest Generation should be required to keep detailed records of any one-hour period with average opacity above the applicable opacity limit.

Response:

The proposed changes to Condition 7.1.9(c) would not result in the Periodic Monitoring for the coal-fired boilers at the Waukegan Station being insufficient. The changes to this condition maintain consistency

with 40 CFR 70.6(a)(3)(i)(B) (Section 39.5(7)(d)(ii) of the Act).^{33, 34} Compared to the initial permit, essentially all that has occurred in Condition 7.1.9(c) of the issued permit is that a specific value for the level of opacity, 30 percent, 3-hour average, is now set as part of the Periodic Monitoring to assure compliance with the PM standard for the Waukegan Station boilers. This value takes the place of the statistical criterion or "method" that would have been required for the future establishment by the Waukegan Station of value(s) of opacity that would serve to assure compliance with the PM standard.³⁵ The "alternative" approach to Periodic Monitoring for the coal-fired boilers for PM that is now present in the revised permit is consistent with the relevant conclusion from the USEPA's decision in *In the Matter of Midwest Generation, LLC, Waukegan Station*.³⁶ This order does not state or suggest that the value of opacity that is selected for Periodic Monitoring must directly correlate with a violation of the PM standard, as implied by this comment:

In this case, since Illinois EPA used opacity and (sic) as one of the surrogate methods to assure compliance with PM limits, the Title V permit must include a specific opacity limit or a method for determining an opacity limit that would correlate the results of the PM testing results (sic) and the opacity limit. *In the Matter of Midwest Generation, LLC, Waukegan Generating Station*, USEPA Administrator Order (Sept. 22, 2005), p 20.

Finally, this comment has not demonstrated that the 30 percent opacity limit in 35 IAC 212.123(a) has the role suggested by this comment for the CAM Plan required under 40 CFR Part 64 to

³³ 40 CFR 70.6(a)(3)(i)(B) provides as follows:

(3) *Monitoring and related recordkeeping and reporting requirements.* (i) Each permit shall contain the following requirements with respect to monitoring: ... (B) Where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to paragraph (a)(3)(iii) of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph (a)(3)(i)(B) of this section.

³⁴ 40 CFR 70.6(c)(1) does not appear to impose any additional requirements for the subject monitoring. As reiterated by USEPA in the order for the Waukegan Generating Station cited by this comment, "EPA has interpreted section 70.6(c)(1) as requiring that title V permits contain monitoring required by applicable requirements under the Act (e.g., monitoring required under federal rules such as MACT standards and monitoring required under SIP rules) and such monitoring as may be required under 40 CFR 70.6(a)(3)(i)(B)." *In the Matter of Midwest Generation, LLC, Waukegan Generating Station*, EPA Administrator Order (Sept. 22, 2005), p 19.

³⁵ By way of further explanation, Midwest Generation appealed Condition 7.1.9(c)(ii) in the initial CAAPP permit, which would have required it to develop a value for opacity based on the results of emissions testing, with a numerical value for opacity set at the "upper bound of the 95 percent confidence interval." Midwest Generation argued that this requirement imposed an "unreasonable burden" and would not generate information that could be used in conjunction with other actions to address compliance with the PM standard(s). Settlement discussions confirmed the difficulties in this condition of the initial permit. Among other things, it required the correlation between opacity and PM emissions to meet a statistical criterion as related to the confidence interval. This criterion would not necessarily be able to be met given the nature of the correlation between opacity and PM emissions and the data that would be available from emissions testing to develop the correlation.

³⁶ The USEPA's Order in *In the Matter of Midwest Generation, LLC, Waukegan Generating Station*, is considered the appropriate guidance from USEPA for this proceeding. This is because it is more recent and addressed Title V permitting of a coal-fired power plant in Illinois.

address compliance of the coal-fired boilers at the Waukegan Station with the applicable PM standard in 35 IAC 212.202. The indicator range for opacity under the CAM Plan could be higher than 30 percent if such higher value would provide a reasonable assurance of compliance with 35 IAC 212.202. However, Midwest Generation has reasonably chosen to set the indicator range at 30 percent. This is because opacity greater than 30 percent on a three-hour average from the coal-fired boilers would, in practice, almost certainly be accompanied by violations of 35 IAC 212.123.

Comment VIII -

Revisions to the Operating Permit Do Not Provide Adequate Recordkeeping Processes (4st para.)

Following PM emission testing, Midwest Generation may determine that the percent opacity that constitutes a PM violation may be well below this 30 percent limit. It would therefore be inappropriate for Midwest Generation to not keep record of all PM violations that do not exceed 30 percent opacity. Although the Statement of Basis notes that this 30 percent value is "potentially mutable," this possibility is not reflected in the draft CAAPP permit. (Statement of Basis at 21). The CAAPP permit should ensure that this 30 percent parametric monitoring limit can be revised downward if a more stringent limit is necessary to ensure of compliance with applicable PM standard.

Response:

It is implicit in the conditional approval of the CAM Plan that an indicator range less than 30 percent may eventually be set based on the results of the required PM testing. It must again be mentioned that the indicator range will be set at a level at which compliance with the state PM standard, 35 IAC 212.202, is reasonably assured. This will not mean that opacity higher than this level indicates a violation of the PM standard.

Comment VIII -

Revisions to the Operating Permit Do Not Provide Adequate Recordkeeping Processes (5nd para.)

Recordkeeping requirements for the COMS in Condition 7.1.9(c)(ii)(B) would be revised to require a description of, rather than an explanation for, opacity exceedances unless other information shows that PM emissions exceed the applicable state PM standard, 0.1 lb/mmBtu in any one-hour period. Records that include explanations of opacity exceedances are necessary to enable Illinois EPA and the public to bring enforcement actions for opacity violations. Without PM CEMs, there generally will not be records indicating that PM emissions standards were exceeded. Indeed, that is why opacity is being used as the CAM indicator for PM. Explanations of opacity violations are thus necessary to show whether an incident was occurring and, thus, whether particular permit provisions concerning the incident apply. These revisions would seriously compromise information that is available for violations.

Response:

In this context, the difference between an "explanation of an incident" and a "description of an incident" is not considered significant. The Illinois EPA concluded that a minor change in terminology was warranted to resolve the appeal of the subject recordkeeping requirements.

Comment IX.A -

The Reporting of Opacity Measurements During Each Six-Minute Period, During Exceedances, Should be Reinstated

The revised CAAPP permit would remove and weaken many reporting requirements from the initial CAAPP permit. Reporting keeps Illinois EPA updated on any problems at the Waukegan Station, giving Illinois EPA and Midwest Generation the opportunity to work together to resolve any issues. Furthermore, Midwest Generation must engage in adequate reporting to provide Illinois EPA and the public with the information necessary to demonstrate reasonable assurance of compliance with the law.

In particular, Illinois EPA proposes to remove the requirement under Condition 7.1.10-2(d)(iv)(A)(4) that Midwest Generation include in quarterly operating reports "[t]he percent opacity measured for each six-minute period during the exceedance." In the Statement of Basis, Illinois EPA asserts that the condition has been changed because "the revised permit relies upon opacity of emissions on a 3-hour average, rather than on a 6-minute average, as the indicator of compliance of the coal-fired boilers with 35 IAC 212.202." (Statement of Basis at 27). Again, a three-hour block average cannot assure compliance with an hourly emission limit. Moreover, this explanation does not provide a basis for deleting the requirement to report percent opacity measured during a violation of PM emission limits. Given that opacity is continuously monitored by the COMS, the requirement to report opacity in six-minute increments is not burdensome, but supplies useful information to both Illinois EPA and the public to enforce other permit requirements. This condition should be retained.

Response:

This condition does not need to be retained as requested in the comment. As noted in the comment, the requirement to include in quarterly operating reports the percent opacity measured for each six-minute period during an exceedance was removed from the CAAPP permit because the permit relies upon opacity on a 3-hour average, rather than a 6-minute average. This is the basis for removing the requirement as specifically discussed in the Statement of Basis. The comment further states that given that the opacity is continuously monitored by the COMS the requirement to report opacity in six minute increments is not burdensome. This condition was also revised to require the qualitative or if available quantitative magnitude of the exceedance (3-hour average and any supporting data i.e., 6-minute averages and 1 minutes averages) to be included in the

quarterly report. Therefore any available data, including COMS data, would be included in the quarterly compliance reports. Additionally, the revision did not remove any requirement for other exceedance data, such as an opacity violation, to be included in this report.

Comment IX.B -

The CAAPP Permit Should Not Increase the Duration of Opacity Exceedances That Triggering Immediate Reporting

Condition 7.1.10-3(a)(i) would be revised to increase the duration of exceedance of the 30 percent opacity standard that triggers Midwest Generation's requirement to immediately notify Illinois EPA from five or more 6-minute averaging periods to eight or more periods. In the Statement of Basis, Illinois EPA asserts that the additional 18 minutes are necessary to provide "a reasonable opportunity for the source to complete corrective action so that the source would not need to undertake immediate reporting to the Illinois EPA for opacity exceedances that were relatively brief and accordingly likely minor in nature." (Statement of Basis at 28-29). This explanation is unreasonable. Pursuant to 35 IAC 212.123 and 212.124, opacity exceedances of two six-minute averaging periods constitute violations of the SIP's opacity and PM emission limits. Exceedances of thirty minutes in duration are serious violations that should be brought to Illinois EPA's attention immediately. The conditions allow Midwest Generation to notify Illinois EPA by "telephone (voice, facsimile or electronic)"—a process that with modern communication technologies would take one worker less than one minute. This process is not burdensome and would not interfere with the corrective action process. The Condition should be reinstated.

Response:

This comment does not show that the planned change to this condition was improper and that the initial condition should have been retained in the revised permit. Condition 7.1.10-3(a)(i) deals with reporting for continued operation of a boiler with excess opacity or PM emissions, including continued operation during malfunction or breakdown. It requires Midwest Generation to provide certain "incident specific" notifications and reports to the Illinois EPA for such incidents. All such incidents must also be reported in the quarterly reports under Condition 7.1.10-1(b) (periodic reporting of deviations) and Condition 7.1.10-2(d) (reporting of opacity and PM emissions). This comment specifically addresses the requirement in Condition 7.1.10-3(a)(i) that Midwest Generation must immediately notify the Illinois EPA when the opacity from a boiler exceeds the opacity standard for a specified number of 6-minute averaging periods, unless the Waukegan Station has begun shutdown of the boiler by such time.

Midwest Generation appealed Condition 7.1.10-3(a)(i) in the initial permit. In the settlement negotiations, Midwest Generation explained that it objected to having to provide notifications for opacity exceedances at a point in time when the circumstances surrounding the

exceedances may still be unfolding or investigations are only at an initial stage. It became apparent that some of the assumptions that the Illinois EPA had made when initially selecting a timeframe of 30 minutes (five 6-minute averaging periods) for immediate notification were not correct. The Illinois EPA had assumed that 30 minutes would provide a reasonable opportunity for the Waukegan Station to complete corrective action so that it would not need to undertake immediate reporting to the Illinois EPA for opacity exceedances that were relatively brief and accordingly likely minor in nature. In addition, it was expected that 30 minutes would provide adequate time for the Waukegan Station to conduct an initial evaluation for more serious incidents, for which immediate reporting would be needed, so that such reports would be able to include useful information. Finally, it was also expected that 30 minutes would provide appropriate incentives for rapid implementation of corrective actions.

However, it is now recognized that 30 minutes is not adequate for these purposes. Therefore, the length of time before the immediate notification requirement is triggered has been increased from five to eight 6-minute averaging periods (30 minutes to 48 minutes). The Waukegan Station will now have 18 additional minutes in which to correct the problem causing excess opacity or begin to shut down a boiler before it needs to provide immediate notification. This will more effectively accomplish the underlying purposes of the initial requirement. The resulting consequences for compliance are expected to be trivial given the relatively small amount of additional time that the Waukegan Station has been provided.

Comment IX.C -

The Permit Should Keep Certain Reporting Related to 35 IAC 212.123(b)

For the coal-fired boilers, draft revised Condition 7.1.12(a)(ii)(E) would no longer require Midwest Generation to provide Illinois EPA with notice at least 15 days before changing its procedures associated with its reliance on 35 IAC 212.123(b) for the opacity of the boilers. This is problematic because, with such notification, the Illinois EPA would potentially be able review the revised procedures before Midwest Generation begins to implement them. Under the revised condition, Midwest Generation would only need to notify the Illinois EPA in its next quarterly report after it changes these procedures. The Statement of Basis states that the Illinois EPA need not review proposed changes to the type of short-term data, so long as Midwest Generation continues to satisfy all elements of 35 IAC 212.123(b) if it is relied upon. (Statement of Basis at 32). However, in order to determine whether this rule has been satisfied, there must be appropriate data in the first place. Therefore, existing Condition 7.1.12(a)(ii)(E) should be retained to afford the Illinois EPA the opportunity to review any changes in the type of short-term opacity data collected by Midwest Generation pursuant to Condition 7.1.12(a)(ii)(A).

Response:

Upon further consideration, the Illinois EPA has concluded that

advance notice by Midwest Generation, as would have been required for certain changes to its procedures by Condition 7.1.12(a)(ii)(E) in the initial permit, is not warranted. The key purpose of this condition was to ensure that Midwest Generation was keeping appropriate short-term opacity for the boilers as is needed to implement to 35 IAC 212.123(b). However, Condition 7.1.12(a)(ii)(A) clearly lays out the types of short-term opacity data that Midwest Generation must record as it elects to rely on 35 IAC 212.123(b), i.e., either a continuous chart recording for opacity, a record of discrete measurements of opacity taken no more than 10 seconds apart, or a record of 1-minute average opacity data.

Moreover, it is unlikely that the Illinois EPA would be able to complete any review of a planned change within the 15 day period that would have been provided by the initial CAAPP permit. 35 IAC 212.123(b), which is part of Illinois SIP, does not provide that a source must obtain approval from the Illinois EPA prior to reliance on this alternative to the generally applicable opacity standard in 35 IAC 212.123(a). Finally, the initial condition was overly broad as it could have been interpreted to extend to any change in procedures by Midwest Generation, including changes in the personnel that reviewed opacity data or the scheduling of this review.

Comment IX.D -

SO₂ Exceedances Should not be Reported Using Only Averaging

Draft revised Condition 7.1.10-2(b)(iii)(C) would require Midwest Generation to include in its quarterly reports exceedances of SO₂ emissions in one-hour and three-hour averages for each three-hour block of excess emissions. This block averaging would not provide an accurate overview of the trajectory of these exceedances and would not tell individuals reviewing such reports what the maximum SO₂ levels were. The permit should require reporting for SO₂ exceedances that does not consist of averages so that exceedances can be better understood.

Response:

As indicated in Condition 7.1.10-2(b)(iii)(C), the averaging period for the relevant SO₂ standard, 35 IAC 214.141, as addressed in Condition 7.1.4(c), is a three-hour block average. Accordingly, Condition 7.1.10-2(b)(iii)(C) requires that Midwest Generation report exceedances of this standard to the Illinois EPA. Since this standard applies on a three-hour block average, it is wholly appropriate to require that three-hour average SO₂ emission rates be provided in the quarterly compliance reports. Moreover, this condition also requires Midwest Generation to report the individual one-hour average emission rates that make up the three-hour block average. Since the boilers burn low-sulfur coal and do not rely on SO₂ control devices to comply with 35 IAC 215.141, this will provide the necessary information to understand any exceedance or deviations and what response is appropriate. In particular, this reported data will indicate whether the SO₂ exceedance is a consequence of unusually high sulfur content in the coal during a particular hour or reflects a longer increase in

the sulfur content of the coal supply.

Comment IX.E -

The CAAPP Permit Must Be Revised to Remove the Potential for a De Minimus Exception for Opacity Violations

Condition 7.1.10-2(d)(ii) of the revised draft permit would lessen the stringency of the reporting requirements when excess opacity is less than one percent of the total operating time for an affected boiler during the calendar quarter, or if the opacity monitoring system downtime was less than five percent of the total operating time for an affected boiler during the quarter. USEPA has made it clear that there is no de minimus exception, and there has also never been a de minimus exception in the State of Illinois. This de minimus exception is problematic because it could protect the Waukegan Station from certain enforcement actions, which would have the practical effect of unlawfully increasing the Waukegan Station's total air emission limits. This de minimus reporting exception must be deleted from the permit.

Response:

The revisions to Condition 7.1.10-2(d)(ii) do not establish a "de minimus" level for opacity exceedances within which opacity is not considered or treated as violations, as claimed by this comment.³⁷ Rather the changes to Condition 7.1.10-2(d)(ii) relate to periodic reporting for continuous opacity monitoring systems.

Condition 7.1.10-2(d) was revised to accurately cite the reporting requirements applicable to the source in 40 CFR 60.7(d) which states:

(d) The summary report form shall contain the information and be in the format shown in figure 1 unless otherwise specified by the Administrator. One summary report form shall be submitted for each pollutant monitored at each affected facility.

(1) If the total duration of excess emissions for the reporting period is less than 1 percent of the total operating time for the reporting period and CMS downtime for the reporting period is less than 5 percent of the total operating time for the reporting period, only the summary report form shall be submitted and the excess emission report described in §60.7(c) need not be submitted unless requested by the Administrator.

(2) If the total duration of excess emissions for the reporting period is 1 percent or greater of the total operating time for the reporting period or the total CMS downtime for the reporting period is 5 percent or greater of the total operating time for the reporting period, the summary

³⁷ This comment appears to assume that a "de minimus exception" for opacity exceedances exists if the duration of opacity exceedances as a percentage of overall operating time of a boiler is less than one percent.

report form and the excess emission report described in §60.7(c) shall both be submitted.

Condition 7.1.10-2(d)(i) requires submittal of information on the performance of the opacity monitoring system and excess emissions as required for a "Summary Report" specified by 40 CFR 60.7(d) with every quarterly report, as required by 40 CFR 60.7(d)(1).

Condition 7.1.10-2(d)(ii) requires submittal of the "Summary Report" required by Condition 7.1.10-2(d)(i) as well as the additional information required by Conditions 7.1.10-2(d)(ii) and (iii) when total duration of excess opacity during the calendar quarter is 1 percent or greater of the total operating time for an affected boiler during the quarter or if the opacity monitoring system downtime was more than 5 percent of the total operating time for an affected boiler during the quarter, as required by 40 CFR 60.7(d)(2). Accordingly, these conditions accurately reflect the relevant federal reporting requirements in 40 CFR 60.7 that apply to continuous opacity monitoring systems.

Comment IX.F -

The CAAPP Permit Must Be Revised to Provide More Guidance on Reporting of Exceedances during SSM Periods

The draft revised permit generally reduces the quality of information Midwest Generation is required to provide for SSM events. For instance, whereas the original permit required Midwest Generation to report the "date, time, duration, and description" of any exceedances during startup, revised Condition 7.1.9(g)(ii)(A) would require reporting of the "nature of such exceedance(s), including the qualitative or, if available, quantitative magnitude" thereof. It is not clear exactly what the "nature of" reporting requires, but Illinois EPA provides no guidance for this new terminology in its statement of basis. (See generally Statement of Basis). Therefore, the revised permit should provide more thorough guidance on what reporting is required, and in particular ensure that Midwest Generation shares all relevant information relating to exceedances.

Response:

The revised CAAPP permit still requires appropriate records for startup of the coal-fired boilers. Upon further consideration during the course of settlement negotiations with Midwest Generation, the Illinois EPA has concluded that the recordkeeping for startups of the coal-fired boilers that would have been required by the initial permit could be significantly reworked while still requiring meaningful recordkeeping. The changes to the required records for startups, which this comment broadly characterizes as relaxations and summarily opposes, reflect the result of this reevaluation of these provisions by the Illinois EPA. The changes to these provisions also serve to address the appeal of these recordkeeping requirements in the original permit. Midwest Generation challenged these requirements as being as unreasonable given the rote nature of routine startups of the coal-fired boilers, which take place in accordance with its established

procedures for startups. It also challenged these conditions as they extended to emissions during startups that complied with applicable standards.

Moreover, this comment does not accurately describe the changes that have been made, suggesting that they relax the scope of the required recordkeeping. In fact the revised CAAPP permit still requires records for "the date, time and duration of each startup." This requirement was moved and never referred to excess emissions. With respect to emissions, the initial permit only required startup-specific information for the magnitude of excess emissions of PM or CO and whether applicable standards were exceeded for extended startups. Otherwise, for typical startups, the initial permit relied on information for emissions during typical startups. The revised CAAPP permit requires startup-specific information related to excess emissions for all startups. For this purpose, Midwest Generation must provide detailed information including "...an explanation of the nature of such exceedance(s), including the qualitative or if available, quantitative magnitude of such excess emissions." ³⁸

Comment X.A -

Illinois EPA Should Revise the CAAPP Permit to Require Specific Control Measures for Coal Handling, Coal Processing, and Fly Ash Handling Equipment

The CAAPP permit should strengthen equipment standards that pertain to coal handling, coal processing, and fly ash equipment. Inadequate management of such equipment can lead to exceedances in fugitive emissions and noncompliance with federal and state laws.

In particular, Illinois EPA fails to require any specific control measures for coal handling, coal processing and fly ash handling equipment. The proposed modified conditions are so vague as to be unenforceable. In the original conditions, the emission sources were required to implement identified controls. Based on the revised language, though, it is impossible to know whether any specific control is required.

Midwest Generation is given too much discretion over its control measures, making this condition out of compliance with 40 CFR 70.6(a). Under Conditions 7.2.9(b)(i)-(iii), 7.3.9(b)(i)-(iii), and 7.4.9(b)(i)-(ii) Midwest Generation must maintain a record to reflect any changes in control measures for coal handling, coal processing, and fly ash handling and storage and equipment. This record for coal processing equipment and fly ash handling equipment must be accompanied by a demonstration that these measures are sufficient to ensure compliance with emission limitations. However, Midwest

³⁸ For exceedances of emission standard during startups, Condition 7.1.9(g)(ii)(B) also requires Midwest Generation to keep records related to the actions taken to minimize the magnitude and duration of excess emissions. It also requires records that explain whether similar events could be prevented in the future and, if so, a description of the taken or to be taken planned to prevent similar exceedance in the future.

Generation is not required to seek Illinois EPA's approval in order to implement these changes. Finally, because Midwest Generation is given absolute discretion in selecting its control measures, if any, the public is denied the opportunity to meaningfully comment on these measures.

We therefore concur with USEPA in its request that the proposed CAAPP permit: (1) Specify minimum control measures for coal handling, coal processing, and fly ash handling equipment by revising Conditions 7.2.6(a)(i), 7.3.6(a)(i), and 7.4.6(a)(i); (2) Require Illinois EPA to review and approve of any control measures selected by Midwest Generation by revising Conditions 7.2.9(b)(i)-(ii), 7.3.9(b)(i)-(ii), and 7.4.9(b)(i)-(ii); and (3) Incorporate the specific control measures, including the pertinent information on the control measures (description, frequency, and other information necessary to demonstrate compliance with applicable limitations), corresponding to each emission point into the permit during the reopening process.

Response:

See response to USEPA Comment 1 below.

Comment X.B -

The CAAPP Permit Should Be Revised to Include Several Emissions Units that Were Previously Removed (1st para)

The draft revised permit would remove all mention of several emissions units that are no longer subject to certain regulations. These are: (1) Coal crushing house; (2) Coal crushing operations; (3) Dust suppressant application system; (4) Water sprays; (5) Outdoor storage piles/Dust collection devices; and (6) Enclosures and covers. All equipment delineated in Conditions 7.2.2, 7.3.2, and 7.4.2 are denoted by the permit as "affected operations" or "affected process[es]" in Conditions 7.2.3(a), 7.3.3(a), and 7.4.3(a). Under Condition 7.2.4(a), 7.3.4(a), and 7.4.4(a), fugitive emissions of these affected operations must comply with emission standards. Removing the above emission units no longer subjects these units to emissions standards compliance. However, the SIP in 35 IAC 212.301 and 212.313 places emission standards on any process and on all particulate collection equipment regulated under Conditions 7.2, 7.3, and 7.4. Therefore, the permit must reinstate all emission units deleted from these conditions in order to reasonably assure of compliance with applicable standards.

Response:

The proposed changes to Condition 7.2.2, 7.3.2 and 7.4.2 do not affect applicability of any emission standards as incorrectly suggested by this comment. Rather certain changes to these conditions were made to reflect terminology routinely used by Midwest Generation to refer to the relevant handing operations. As this will reduce possible confusion, this will enhance implementation of the permit.³⁹ In

³⁹ In particular, in Condition 7.2.2, "coal receiving" was changed to "coal unloading by rail." In Condition 7.3.2, "coal crushing operations" was changed to "coal conditioners."

addition, in Condition 7.3.2, "crusher house" was removed because the relevant emission units that process coal are the coal conditioners and not the building in which they are located.

Emission control devices and emission control measures are no longer identified in Conditions 7.2.3, 7.3.3 and 7.4.3. This is because, as previously discussed in this document, control devices and control measures utilized for coal processing, coal handling and fly ash handling equipment must be specifically identified by Midwest Generation in the records required by Conditions 7.2.9(b)(i), 7.3.9(b)(i) and 7.4.9(b)(i).

Comment X.C -

The CAAPP Permit Must be Revised to Provide for Adequate Inspections of Coal and Fly Ash Handling Processes (1st para.)

The draft revised CAAPP permit would not require adequate inspections of coal and fly ash handling processes. Among other inspection measures, Conditions 7.2.8(b), 7.3.8(b), and 7.4.8(b) direct Midwest Generation to inspect affected operations by either monitoring visible emissions ("VE") or opacity annually. This lack of regular monitoring or inspections is troubling. "Given that the majority of the affected equipment operates regularly throughout the year, it is not clear how the draft CAAPP permit inspection requirements and frequency of the required VE observations are adequate to yield reliable and accurate emissions data, as required by 40 CFR 70.6(a)(3)(i)(B)." USEPA Comments on the Waukegan Station's Proposed CAAPP Permit.

Response:

See response to USEPA comment 2 below.

Comment X.C -

The CAAPP Permit Must be Revised to Provide for Adequate Inspections of Coal and Fly Ash Handling Processes (2nd para.)

For the coal handling, coal processing, and fly ash handling operations at the Waukegan Station, the Periodic Monitoring required by the CAAPP permit must include inspections on a regular basis. The Illinois EPA should also have provided an explanation in the Statement of Basis for the draft revised CAAPP permit for how the control measures and monitoring requirements for each transfer point, coal pile, conveyor belt, and other fugitive emission points will assure compliance with all applicable opacity and PM limits. This should include a discussion of the relationship between monitoring frequency and applicable emission limits.

Response:

As generally discussed in the Statement of Basis, the regular inspections of coal handling, coal processing and fly ash handling required by Conditions in 7.2.8, 7.3.8 and 7.4.8, respectively, of the CAAPP Permit for the Waukegan Station will serve to confirm that the relevant control measures are being properly implemented for these

emission units. As discussed in other responses, these control measures must be developed to ensure compliance with the applicable standards, as set forth in Conditions 7.2.4, 7.3.4 and 7.4.4 of the CAAPP permit. As such, proper implementation of the control measures should ensure compliance. Formal verification of the proper implementation of control measures on a monthly basis (weekly basis for fly ash load out processes) is sufficient because these control measures will become part of the standard operating procedures for these units. In addition, proper implementation of the control measures for a unit is required at all times that the unit is in operation. Any lapses in the implementation of control measures are deviations and must be addressed in the records required by Condition 7.2.9(e), 7.3.9(d) and 7.4.9(d).

The CAAPP permit also includes requirements to confirm that the relevant control measures assure compliance with applicable standards. With respect to the opacity standard, as part of the regular formal inspections of these units, Midwest Generating is also required to conduct observations for visible emissions or opacity of some units during each inspection with all of these units observed for visible emissions or opacity at least once per calendar year. For coal processing equipment and fly ash handling equipment, which are subject to the PM emission standards in 35 IAC 212.321 or 212.322. Midwest Generation is required by Conditions 7.3.9(b)(ii) and 7.4.10(b)(ii) to maintain a demonstration that confirms that the control measures used for this equipment are sufficient to assure compliance with the applicable limits pursuant to these standards.

Comment X.D -

Illinois EPA Should Revise the CAAPP Permit's Inspection Requirements to Include Dust Collection Equipment

The revised draft CAAPP permit would no longer require Midwest Generation to perform detailed inspections of dust collection equipment, as was required by Conditions 7.2.8(b) and 7.3.8(b) of the initial CAAPP permit. Instead the revised Conditions 7.2.8(c)-(d) and 7.3.8(b)-(c) only include inspections of coal storage bunker baghouses rail car baghouses, and the coal breaker building baghouses. It is inappropriate to no longer inspect all dust collection equipment for coal handling and coal processing. The Illinois SIP places emission limitations on particulate collection equipment, 35 IAC 213.313. To reasonably assure compliance with the SIP, Midwest Generation must conduct inspections of all dust collection equipment. The revised permit should retain the requirements of Conditions 7.2.8(b) and 7.3.8(b) of the initial CAAPP permit.

Response:

As already addressed in response to previous comments, Midwest Generation is required to conduct periodic inspections of all material handling and processing units while they are in operation. The revisions to Condition 7.2.8(b) of the initial permit (now Condition 7.2.8(c) in the draft revised permit) addressed the dust control

devices for which additional "out-of-service" inspections are appropriate. For the Waukegan Station, the baghouse on certain coal handling units was the only dust control device for which these additional inspections are appropriate. This is because PM emissions from the coal processing and fly ash units at the Waukegan Station are not controlled by any baghouses. The emissions of these units are controlled by work practices or bin vent filters.

The out-of-service inspections of the baghouse for coal handling are warranted due to the number of filter bags in this device which are automatically cleaned as part of the operation of the device. Internal visual inspections are appropriate to confirm the condition of the filter bags and absence of internal wear of fittings. These inspections may identify the need for preventative maintenance or repairs. Upon further consideration, the Illinois EPA has concluded that the bin vent filters at the Waukegan Station do not have the internal parts and complexity of baghouses and do not warrant mandatory out-of-service inspections. Additionally, permit Condition 7.2.8(b) requires visible emission observations and corrective actions if visible emissions are observed. Accordingly, the revised CAAPP permit no longer requires out-of-service inspections for bin vent filters.

Comment X.E -

The Permit Should Require Periodic Inspections of Coal Handling, Coal Processing and Fly Ash Handling Equipment by Individuals Not Involved in Their Day-to-Day Operation

Conditions 7.2.8(a), 7.3.8(a), and 7.4.8(a) of the initial CAAPP permit would be revised to no longer require periodic inspections of the subject emission units to be conducted by individual "not directly involved in the day-to-day operation" of the units. Not requiring inspections to be conducted by individuals not directly tied to the operation of the units threatens conflicts of interest. Illinois EPA would change these provisions to address Midwest Generation's concern that inspections be conducted by personnel with the requisite knowledge. (Statement of Basis at 37-38). However, requiring that inspections be conducted by individuals with a greater level of independence from the procedures does not preclude management and supervisory personnel from also conducting inspections. The Illinois EPA must retain the original conditions to the extent that they call for inspections to be conducted by individuals "not directly involved in the day-to-day operation" of the units. To address the concern regarding personnel having sufficient knowledge to conduct the inspections, Illinois EPA could add a requirement that the personnel conducting inspections "have the requisite knowledge to do so."

Response:

The concern expressed by this comment is addressed by the revised conditions as they now require sign off on the records for these periodic inspections by management or supervisory personnel. Accordingly, if the relevant manager or supervisor chooses to have

another individual perform these inspections, the conditions clearly provide that such manager or supervisor retains the responsibility for the inspections. Moreover, the revised conditions should be more effective than the initial conditions as they require sign off by the relevant manager or supervisor. These individuals and their staff will have the requisite knowledge about the appropriate operation of the control measures for the subject units. They will also have the necessary training to safely conduct inspections of these units. The manager or supervisor will also have the authority and responsibility to initiate corrective actions if an inspections reveals an issue. While the initial conditions were written to require that these inspections be conducted by personnel who are not involved in day-to-day operations of the subject units, the conditions did not address other concerns that are relevant for these inspections.

Comment X.F -

The Public Should Have the Opportunity to Comment on Midwest Generation's Fly Ash Contingencies

Condition 7.4.3(b)(iii) of the initial CAAPP permit would not be carried over to the revised CAAPP permit. This condition required Midwest Generation to maintain a contingency plan for the handling and temporary stockpiling of fly ash if an affected process must be taken out of service. Instead, Condition 7.4.11(c) was added in the revised permit. Condition 7.4.11 grants Midwest Generation the ability to make certain physical and operational changes to critical fly ash equipment processes without any prior notification to Illinois EPA or revision of the permit. Condition 7.4.11(c) in particular, would provide that the temporary stockpile storage handling of such fly ash for offsite shipment would be "managed in accordance with the Fugitive Particulate Matter Operating Program required by Condition 5.2.4." However, the public is not afforded the opportunity to review the Fugitive Particulate Matter Operating Program. Rather, per Condition 5.2.4(a), the program would be submitted to Illinois EPA outside of the permitting process. Therefore, either the requirements under Condition 7.4.3(b)(iii) relating to the fly ash contingency plan must be reinstated, or the public should be afforded the opportunity to comment on the Fugitive Particulate Matter Operating Program.

Response: -

The contingency plan for handling fly ash required by Condition 7.4.3(b)(iii) of the initial CAAPP permit was only applicable in the event of a malfunction or breakdown an affected fly ash handling process and associated repairs. During settlement negotiations to address the appeal of this "site specific" condition, Midwest Generation indicated that requiring a separate plan for handling and temporary storage of fly ash during malfunction or breakdown was unnecessary because the actions that would be taken would be addressed in the Fugitive Dust Operating Program. In addition, the condition would not address the handling of the fly ash collected from the interior of the boilers when they undergo maintenance and repairs.

Accordingly, Condition 7.4.11(c) was added to the CAAPP permit to address temporary stockpile storage of fly ash and handling of such fly ash for offsite shipment because such activities are addressed under the Fugitive Particulate Matter Operating Program required by Conditions 5.2.4 and 35 IAC 212.309(a). Since this approach also addresses malfunctions or breakdowns and associated repairs, there was no longer a need for a separate contingency plan for those situations. Condition 7.3.4(b)(iii) was removed from the permit and subsequent conditions were appropriately renumbered.

The relevant rules for Fugitive Particulate Matter Operating Programs do not provide for the Illinois EPA to subject such programs to public notice and comment, and do not contemplate an approval process overseen by the Illinois EPA. Future permit actions for this source will incorporate this program by reference and the current program will be available to the public for review as part of any public comment period for such permit actions.

Comment XI -

The CAAPP Permit Should Provide an Enforceable Heat Rate

The revised draft CAAPP permit would not provide enforceable heat rate standards for the boilers or generating units at the Waukegan Station. The CAAPP permit must provide enforceable heat rates to enable the public to calculate emission rates. The public can ascertain whether there are exceedances in permitted emissions if they have these heat rates. This is of particular importance for individuals who may be affected by emissions from the Waukegan Station. The revised permit should include enforceable heat rates.

Response:

This comment does not show that it is appropriate to include enforceable "heat rate" limits for the coal-fired boilers in the revised CAAPP permit.⁴⁰ The comment does not identify a rule that requires that such limits be included in the CAAPP permit.⁴¹ Such limits also would not enable the public to determine whether there are exceedances of permitted emissions. In particular, the applicable emission standards that apply to these boilers are generally expressed as emission rates, in pounds of a pollutant per million Btu of heat input. They do not limit emissions in pounds of pollutant per hour.⁴²

Comment XII -

The CAAPP Permit Should Indicate which Solid Fuels Will be Used

⁴⁰ The Illinois EPA assumes that this comment is actually requesting that the revised CAAPP permit include limits on the maximum heat input to the boilers, million Btu per hour. It is not actually requesting limits on the heat rates of the boiler as this term actually refers to the thermos-electric efficiency of the boilers, Btu heat input per kilowatt-hour of electricity generated.

⁴¹ Limits on the maximum heat inputs to these boilers were not included in the initial CAAPP permit.

⁴² The applicable CO limit, 35 IAC 216.121, also is a "relative limit" rather than an "absolute limit." It addresses the concentration of CO in the exhaust of the boilers. It does not directly limit the CO emissions of the boilers in pounds per hour.

Under Condition 7.1.5(b) of the CAAPP permit, Midwest Generation may now use solid fuels other than coal at the Waukegan Station. It is not clear from that condition what this means, however. The permit should include information on exactly what other solid fuels would be used at the station. In particular, is Midwest Generation already using solid fuels other than coal at this plant? What solid fuels does Midwest Generation intend to use in the future?

Response:

Condition 7.1.5(a) does not provide that Midwest Generation may now use solid fuels other than coal at the Waukegan Station. Rather this condition was revised to better reflect the wording of the relevant state emission standards that apply to the coal-fired boilers at the Waukegan Station. In particular, these boilers are subject to emission standards for PM and SO₂, at 35 IAC 212.202 and 214.141 respectively, for fuel combustion emission units using or burning "solid fuel." These emission standards are applicable to the boilers as coal is a solid fuel.

In fact, the only solid fuel burned by these boilers is coal. The Illinois EPA is not aware of any plans to begin supplementing this coal with another solid fuel. Before this could occur, Midwest Generation would likely have to obtain an air pollution control construction permit for the changes to the Waukegan Station that would be needed to handle a solid fuel other than coal.

Comment XIII -

The Agency Improperly Involved Outside Entities in Drafting the Permit's Statement of Basis.

Illinois EPA improperly allowed at least one private entity to give input on Statements of Basis for Illinois coal plants. Under federal law, "[t]he *permitting authority* shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions)." 40 CFR 70.7.(a)(5) (emphasis added). In the State of Illinois, Illinois EPA issues a Statement of Basis to meet the requirements of this federal regulation. In Illinois EPA's Statements of Basis, it justifies its determinations on facilities, including its discretionary decisions.

However, a review of documents requested by the Sierra Club under the Freedom of Information Act (FOIA) revealed that private entities, including MWG, Dynegy, Southern Illinois Power Cooperative, Dominion/Kincaid, and lawyers from Schiff Hardin, were involved in the behind-closed-door reissuance process for Illinois CAAPP permits. One FOIA'd document was a June 2015 draft of Waukegan Station's Statement of Basis that included comments and markups from a Schiff Hardin attorney. See "Shiff Hardin LLP Draft" Statement of Basis (June 3, 2015). This private-sector involvement in drafting the Waukegan Station Statement of Basis does not comport with federal law and is improper. Under the Code of Federal Regulations, Illinois EPA, as the

permitting authority must issue the Statement of Basis. This document is not intended to be a vehicle for private entities to bolster arguments for their preferred regulations. There are other times, such as during the public comment period, when permittees and other private entities can make such arguments. Giving industry this level of access undermines the public's trust in Illinois EPA's ability to represent the best interests of the citizens of the State of Illinois, and issue safe and unbiased permits.

Illinois EPA must modify its conduct when drafting Statements of Basis by excluding private industry from providing feedback on Statements of Basis before other members of the public have access to this same documentation. We have several questions about Midwest Generation's and its representatives' level of involvement while drafting the CAAPP permit for Waukegan Station and the permit's Statement of Basis:

- (1) How many times did Midwest Generation and its representatives meet with Illinois EPA staff to discuss the draft CAAPP permit and the permit's Statement of Basis?
- (2) What feedback did Midwest Generation and its representatives provide on the draft CAAPP permit's Statement of Basis?
- (3) Did Illinois EPA incorporate any of Midwest Generation's and its representatives' feedback into the draft CAAPP permit's Statement of Basis?
- (4) If Illinois EPA did incorporate any of Midwest Generation's and its representatives' feedback into the draft CAAPP permit's Statement of Basis, what specific feedback did Illinois EPA incorporate?

Response:

E.2 LAKE COUNTY HEALTH DEPARTMENT WRITTEN COMMENTS

As background, the Statement of Basis document stated the 2006 permit appeal to the Illinois Pollution Control Board by Midwest Generation, LLC resulted in the permit being stayed. This, in turn, prevented the CAAPP Permit from being amended to address new rules, regulations and emission standards that have been established since 2006. The Illinois EPA has acknowledged that it has the ability to bring the Waukegan Station into compliance with the up-to-date rules, regulations and standards through re-opening the permit once it's issued and through permit revisions. The Illinois EPA also stated in the Statement of Basis document that this process will begin immediately following issuance of the pending permit.

The Lake County Health Department (LCHD) requests that the compliance process not only start immediately following the issuance of the permit but that it be given a high priority and the necessary resources to meet the objective as soon as possible. The LCHD also

requests that the Illinois EPA pursue permit revisions for any requirements related to monitoring activities, empirical data collection and reporting timeframes that the Illinois EPA believes were detrimentally diminished through the negotiated settlement process.

The Waukegan Station provides jobs and electricity, both of which are important, but the plant must operate in a manner that protects the public health, safety and welfare and the environment.

Response:

E.3 LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC) OF LAKE COUNTY WRITTEN COMMENTS

Please be advised that we write this letter of support on behalf of NRG Energy Midwest Generation. We hereby support the Proposed Significant Modification of the Clean Air Act Permit Program Permit Midwest Generation LLC - Waukegan Station. LULAC of Lake County has found that the NRG Energy Midwest Generation Waukegan Station, under the leadership of Mr. Mark Nagel, to be open and honest with our group which represents Latinos across Lake County and the USA.

We appreciate the communication between the industry and the community; this is necessary progress for all. We also appreciate the efforts made by the leadership of the Waukegan Station; Mr. Mark Nagel has taken the time to personally answer all LULAC of Lake County's questions.

The Waukegan Station leadership and employees have worked hands on with our youth cleaning up in the city of Waukegan. They have assisted with the removal of debris from an alley that was filled with over 10 years of debris, no lights and a haven for drug users. Because of this unified effort today this is a clean alley with a working light post where the families that live in this area can now walk safely. The Waukegan Station has also assisted with the cleanup of hazardous conditions in a building where LULAC National will reside and serve the community.

Our mission as LULAC of Lake County is enhanced by working together with our neighbors NRG Energy Midwest Generation at the Waukegan Station.

We respectfully request that the Illinois Environmental Protection Agency grant the Waukegan Station's permit issuance as a way to protect our environment.

Response:

E.4 AREA RESIDENT WRITTEN COMMENTS

Area Resident 1

This follows up on Public Comments at the September 2 Public Hearing at Illinois Beach State Park.

1) For the last ten years, it appears the Waukegan Station has not been adequately monitored and held accountable for daily emissions of soot and toxic substances into the atmosphere and lake. As was brought forth in public testimony on September 2, this has adversely affected the health of many families in Waukegan, Zion and nearby communities. They suffer from acute asthma and related illnesses.

The poor quality of our air and lake water is a public health issue in northern Illinois and across the state line. The Waukegan Station needs to be held in strict compliance with the Federal Clean Air Act.

2) Real-time collection and reporting of plant emissions and harmful side effects should be mandatory and reported to the public.

3) Daily real-time measurements of air and water quality in Waukegan and adjacent communities should be shared weekly with the media and reported in Lake County newspapers, radio and TV with comparisons of data from recent years.

Response:

Area Resident 2

I am a resident of Waukegan who is affected by the emissions of the Waukegan Station. Since moving to Waukegan 13 years ago, I have developed respiratory problems that force me to use an inhaler on days when air quality in Waukegan is poor. I believe these problems

are related to the emissions of the Waukegan Station.

I am writing this letter to urge you to require Midwest Generation to upgrade the Waukegan Station so that it is in compliance with the emissions control standards currently in effect.

Response:

Area Resident 3

As a resident of Waukegan, living within a short breath of the Waukegan Station, I write this letter on behalf of my fellow Waukegan residents-especially children.. Our health is continually damaged by the emissions of the power plant.

My family and I moved to Waukegan in 2002, and I have been diagnosed as having asthma. A disproportionate percentage of children in Waukegan suffer even more than I, especially on typical days when air quality in Waukegan is dangerously poor. Without doubt, largely unregulated emissions from the Waukegan Station cause these problems. The plant operator is being allowed to break the law blatantly and continually and has been allowed to do so for far too long.

Please require Midwet Generatio to upgrade the Waukegan Station to bring it into compliance with current emissions control standards. There is no other approach that follows Illinois and Federal law, as well as conscientious action.

Response:

Area Resident 4

I am a Waukegan resident whose health is compromised by the toxic coal pollution generated by the Waukegan Station owned by Midwest Generation. According to the EPA, living near a wet coal ash pond is more dangerous than smoking a pack of cigarettes a day. The coal plant is a health liability to all of the citizens of Waukegan.

Since the comment period has been extended, I an1 asking that Illinois EPA address the following:

1. Why has Illinois EPA not reissued this permit in over 10 years?

2. What can Waukegan residents do to make sure that this facility is closed?
3. The standards in the draft pennit are from 2005. Why is Illinois EPA not proposing to issue a permit based on 2015 standards?
4. What options other than accepting the lenient supposed permit that Illinois EPA wants to issue do Waukegan residents have?
5. What laws allow Illinois EPA to issue a permit based on standards from 10 years ago?
6. Why has Illinois EPA not sued this facility for not complying with the permit issued 10 years ago?
7. How many other coal-fired power plants in Illinois have permits that are 10 years old?
8. Why is Illinois EPA not letting the citizens of Waukegan speak openly about this facility and why is Illinois EPA not letting us know about the dangers and health risks associated with this power plant?

Again, this plant should be shut down~ or at the very least brought into conlpliance with the strictest and most recent EPA guidelines. It is unthinkable that the plant would be allowed to operate under any other guidelines.

It is the responsibility of the EPA to protect the water and air quality in Waukegan and the health of all citizens of Illinois.] hope that the Illinois EPA's decision in issuing the Waukegan Station permit will reflect that responsibility.

Response:

Area Resident 5

I am writing on the Matter of a Significant Modification to the Clean Air Act Permitting Program Permit for Midwest Generation's Waukegan Station. It is obvious from the facts cited in the proposed permit and at the recent public hearing at Illinois Beach State Park that this permit should not be granted as currently proposed by Illinois EPA.

The requirements of the proposed permit are several years out of date, and present a real and ongoing health threat to the people who live in the region. This includes air particulate matter as well as coal ash leakage and heavy metals that find their way into Lake Michigan, our regional source of drinking water. Waukegan's children have the highest rate of asthma in the state of Illinois at one in three children. This is unacceptable!!

The good people of Waukegan are not the only ones affected. I also have a chronic lung condition, and there are many days each year when my family and I are downwind from the air pollutants from this coal plant. That makes this a personal issue for me.

Allowing the coal plant to continue polluting at this rate for all these years is disgraceful and has affected many lives through serious respiratory disease and through heavy metals that fall from the air into Lake Michigan and are known to cause irreversible neurological damage in those exposed.

You are called the **Environmental Protection** Agency for a reason, so please **do** that job and protect the people and the local environment by requiring much higher standards in the permits you issue.

I do understand that your job is frequently one of difficult choices, but this one is a no-brainer. There is **NO reason** to allow this blatant, harmful pollution to continue in this day and age.

Response:

E.5 USEPA WRITTEN COMMENTS

USEPA Comment 1 - Minimum Set of Control Measures

The draft revised CAAPP permit would not specify a minimum set of control measures to be applied to coal handling, coal processing, and fly ash equipment to assure continuous compliance with applicable opacity and PM limits. The draft revised CAAPP permit would require the Permittee to implement and maintain control measures to minimize Visible Emissions (VE) of PM from coal handling, coal processing and fly ash equipment, and provide assurance of compliance with the applicable emission standards in conditions 7.2.4, 7.3.4 and 7.4.4.⁴³ The draft permit states that the Permittee shall implement and maintain "the control measures" for the affected operations, which apply to coal handling, coal processing and fly ash handling equipment. Condition 7.2.6(a)(i) (emphasis added). The draft permit further requires the Permittee to submit to Illinois EPA a record of the established control measures for each of the affected operations within 60 days of permit issuance.⁴⁴

⁴³ See Conditions 7.2.6, 7.3.6 and 7.4.6

⁴⁴ See, e.g., Condition 7.2.9(b)(iii).

As written, the draft CAAPP permit would not require the Permittee to use any specific control measures for coal handling, processing, and fly ash equipment. The draft permit would provide the Permittee to select any type of control measure(s), and provides the Permittee discretion to change those control measures. Therefore, the draft CAAPP permit does not comply with 40 CFR 70.6(a) because it does not contain sufficient operational requirements to assure compliance with the applicable opacity and PM limits for coal handling, coal processing and fly ash equipment.⁴⁵ In addition, the draft permit does not provide the public with the opportunity to meaningfully comment on the selected control measures.

To address these concerns, the Illinois EPA should revise Conditions 7.2.6(a)(i), 7.3.6(a)(i) and 7.4.6(a)(i) to specify the minimum set of control measures for the coal handling, processing, and fly ash handling equipment. The Illinois EPA should also revise Conditions 7.2.9(b)(i) and (ii), 7.3.9(b)(i) and (ii) and 7.4.9(b)(i) and (ii) to require review and approval by Illinois EPA of the control measures selected by the Permittee. Finally, in the reopening proceeding, the Illinois EPA should incorporate in the permit the specific control measures, including the pertinent information on the control measures (description, frequency, and other information necessary to demonstrate compliance with applicable limitations), for each emission point.⁴⁶

Response:

The permit conditions addressed by the comment require the Waukegan Station to implement control measures on the affected operations, as well as to "operate and maintain" those measures on an on-going basis.⁴⁷ The permit also requires the Waukegan Station to create and maintain a list of various control measures being implemented,⁴⁸ which are currently identified in the permit as moisture content of the coal and fly ash, dust suppression, enclosures and covers,⁴⁹ and to apprise the Illinois EPA of revisions to the list.⁵⁰ The associated inspection and recordkeeping requirements⁵¹ are designed to ensure that the control measures are being followed. Cumulatively, these control measures, recordkeeping and inspections establish the permit's approach to Periodic Monitoring for these affected operations.

The Illinois EPA established the use of control measures to facilitate Periodic Monitoring for the subject operations. Developed as work practice standards in the initial 2005 permit and retained in the negotiated revisions to the permit,⁵² the use of control measures was

⁴⁵ See, generally, Conditions 7.2.8, 7.3.8, and 7.4.8.

⁴⁶ This is appropriate since the current permit will require the submittal of full documentation to support the selected control measures

⁴⁷ See, Conditions 7.2.6(a)(ii), 7.3.6(a)(ii) and 7.4.6(a)(ii).

⁴⁸ See, Conditions 7.2.9(b), 7.3.9(b) and 7.4.9(b).

⁴⁹ See, Conditions 7.2.1 and 7.2.2, Conditions 7.3.1 and 7.3.2, and Conditions 7.4.1 and 7.4.2.

⁵⁰ See, Conditions 7.2.9(b)(iii), 7.3.9(b)(iii) and 7.4.9(b)(iii).

⁵¹ See, Condition 7.2.8 and 7.2.9, Condition 7.3.8 and 7.3.9, and Condition 7.4.8 and 7.4.9 respectively.

⁵² As previously noted, the requirements for control measures in the revised CAAPP permit are substantially identical to those contained in the initial CAAPP permit. The changes

deemed appropriate as one component of Periodic Monitoring for the affected operations.⁵³ This requirement provided a reliable and enforceable means of verifying compliance with the emission standards that apply to the affected operations (i.e., visible and fugitive emissions).⁵⁴⁵⁵ The legal basis for the control measures is derived from the authority of Section 39.5(7)(a) of the Act for the purpose of supporting Periodic Monitoring that does not stem from applicable requirements expressly derived from underlying regulations.

The nature of the permit requirements is analogous to regulatory programs under the Illinois State Implementation Plan⁵⁶ and certain New Source Performance Standards.⁵⁷ Those programs typically require an affected source to identify best management (or good engineering) practices to minimize emissions as may be needed, or as appropriate, for site conditions. Within the regulatory framework, subject sources retain considerable latitude in selecting the type and suitability of control measures relative to circumstances that directly bear upon the usefulness and/or performance capabilities of those measures. Such flexibility enables sources to address varying types and degrees of site conditions, range of operation and changes in the characteristics of resulting emissions.

In the CAAPP permit, the Illinois EPA's approach to Periodic Monitoring for the affected operations and processes is similar to the regulatory framework described above. However, the Illinois EPA did not require a formal approval process for the selected control measure, or for subsequent changes to the list of control measures. In the absence of underlying regulatory requirements existing in federal or state law, mandating these additional requirements in a Title V permit is potentially outside the scope of Agency authority⁵⁸ and, further is arguably unnecessary given the limited purpose meant to be served by the control measures (i.e., Periodic Monitoring).

being made to these conditions depict mostly stylistic changes to the language and do not modify or alter the substantive elements relating to control measures.

⁵³ The Illinois EPA acknowledged this reasoning in the Responsiveness Summary accompanying the issuance of the initial CAAPP permit, observing that it was requiring the on-going implementation of the work practices and that, together with inspection and recordkeeping, the requirements will assure compliance with periodic monitoring. See, Response to Public Comments for CAAPP Permit Applications for Midwest Generation et al, at 33 (September 29, 2005).

⁵⁴ See, Conditions 7.2.4, 7.3.4 and 7.4.4.

⁵⁵ The requirements contain adequate specificity by acknowledging the type of control measures in use and are practically enforceable by requiring the control measures record and submittal. Notably, these contentions were raised in an earlier proceeding and were rejected by the USEPA. See USEPA order responding to petitions, Midwest Generation (Fisk Generating Station).

⁵⁶ See, 35 IAC 212.309.

⁵⁷ See, 40 CFR Part 60 Subpart Y.

⁵⁸ An attempt to impose such requirements would likely raise legal questions including whether Title V permit authorities may create new substantive requirements and whether mandating the use of certain emission requirements constitutes improper rulemaking. To replicate, through a Title V permit, principal elements of a regulatory program that could not otherwise be imposed on a source as an applicable requirement would likely exceed the scope of gap-filling and/or other implied authorities available to Title V permitting agencies. It can be noted that the Illinois EPA will be reviewing relevant material generated pursuant to the permit (e.g., record of control measures) to assure, for purposes of any future permit action, that the use of control measures being implemented by the source is consistent with applicable permit requirements.

The comment also expresses concern regarding the absence of an opportunity for public comment on the control measures. The revised CAAPP permit, like the initial permit, requires the source to submit a list of control measures that will be operated and maintained within 60 days of permit issuance. Owing to the lack of permit effectiveness for the initial CAAPP permit, the source has yet to generate this record and the comment is therefore premature. Once the record is submitted to the Illinois EPA, it will be available for public viewing and inspection upon receipt of a request filed under Illinois' Freedom of Information Act.^{59 60}

USEPA Comment 2. -
Frequency of VE Observations

The frequency of the required observations of visible emissions (VE) from coal handling equipment, coal processing equipment, and fly ash equipment is inadequate to assure continuous compliance with applicable opacity and PM limits. The draft revised CAAPP permit would contain inspection requirements for the coal handling, coal processing, and fly ash equipment.⁶¹ These include monthly inspections of the coal handling and coal processing equipment, and weekly (and monthly) inspections of the fly ash equipment. In addition, the draft revised permit would require that the Permittee perform VE observations using USEPA Reference Method 22 once per calendar year.

Given that the majority of the affected equipment operates regularly throughout the year, it is not clear how the draft CAAPP permit inspection requirements and frequency of the required VE observations are adequate to yield reliable and accurate emissions data, as required by 40 CFR 70.6(a)(3)(i)(B), with respect to the applicable opacity and process weight rate PM limits

In the reopening proceeding, once Illinois EPA has the information regarding the control measures for different emission points, Conditions 7.2.8(b), 7.3.8(b) and 7.4.8(b) should be revised to include additional monitoring and/or testing to yield the reliable data that assures compliance on a continuous basis.

Finally, Illinois EPA should provide in the Statement of Basis for this permitting action an explanation of how the control measures and

⁵⁹ Further, it is presently anticipated that the generated record will be incorporated by reference in the CAAPP permit by way of a future permit proceeding (e.g., permit reopening or significant modification) and would therefore be a part of any permit record regarding the same.

⁶⁰ It should also be noted that the substance of the comment is beyond the scope of changes being addressed in this permitting action. The subject requirements relating to control measures underwent public comment and USEPA review at initial permit issuance and were clearly ascertainable at that time. More fundamentally, the permit modification procedures undertaken for resolving the CAAPP utility appeals appropriately do not encompass a comprehensive review of the permit. Rather, review is limited to the issues directly arising from the significant modifications to a permit. This approach is supported by the preamble discussion accompanying the Part 70 rules and was adopted by the USEPA Administrator in a subsequent petition response. For reasons that relate to the policy of administrative finality, the approach is equally essential in the current proceeding to achieve a complete resolution of the CAAPP appeal.

⁶¹ See Conditions 7.2.6, 7.3.6 and 7.4.6.

monitoring requirements for each transfer point, coal pile, conveyor belt, and other points of fugitive emissions will assure compliance with all applicable opacity and PM limits. This should include a discussion of the relationship between monitoring frequency and applicable emission limits.

Response:

This comment focuses narrowly on only one aspect of Periodic Monitoring for the subject equipment (i.e., monthly inspection requirement), while overlooking other aspects of the overall monitoring approach.⁶² The concept of Periodic Monitoring eschews a one-size-fits-all framework and is therefore regarded as something of a case-by-case evaluation. In a similar vein, one component of Periodic Monitoring should not trump other components, or be singled out without giving due regard to its relationship to the other components of the monitoring.

A key component of the Periodic Monitoring is an on-going requirement that the Waukegan Station operate and maintain designated control measures for the equipment on an as-needed basis or, similarly stated, as necessary to assure compliance. This obligation, which is required whenever equipment is operating and material is being handled,⁶³ is now codified in the permit, although various uses of control measures have long been practiced by the Waukegan Station and the other utility sources.⁶⁴

The use of control measures is accompanied by periodic verifications that must be formally undertaken by the source. Detailed records must be maintained for each instance in which an affected operation/process operates without the presence of the designated control measures.⁶⁵ Deviations from the requirement to operate and maintain control measures must also be reported.⁶⁶ The inspection and record-keeping requirements are the remaining components of Periodic Monitoring. The formal inspections, by design, will provide specific confirmation that the designated control measures are being properly operated and

⁶² As observed with the previous comment, the Illinois EPA notes that the subject comment is beyond the scope of changes being addressed in this permitting action. The CAAPP procedures governing here restrict this proceeding to only those issues directly arising from the planned significant modifications to the 2005 permit.

⁶³ The fact that the equipment operates on a regular basis does not constitute a sufficient basis to require more frequent inspections, as suggested by the comment, when control measures must be used whenever equipment operates. Moreover, it is inaccurate to suggest that all equipment operates "continuously, 365 days a year." In fact, most of the equipment operates intermittently. For example, the unloading of silos can be limited by other factors not in the control of the Permittee. The duration of daily equipment operation is lower when only one of the boilers is operating and the other boiler is out for maintenance.

⁶⁴ Certain work practices are and will continue to be implemented for the subject equipment, independent of the CAAPP permit, for reasons related to worker safety, equipment reliability and longevity, and operational costs. The introduction of the requirement for control measures to the CAAPP permit is significant in that it codifies past and continuing practices to control dust and establishes a supporting means of oversight and recordkeeping.

⁶⁵ Such records include a description of the event, probable cause of the occurrence, any preventative measures taken, and an explanation of whether the relevant opacity standards were exceeded. See generally, Conditions 7.2.9(e), 7.3.9(d) and 7.4.9(d).

⁶⁶ Occasions during which the subject equipment is not in compliance for more than a specified time require notification within 30 days. Otherwise, the deviation must be reported in a quarterly report. See generally, Conditions 7.2.10(a)(ii) and (iii)(A), 7.3.10(a)(ii) and (iii)(A), and 7.4.10(a)(ii) and (iii)(A).

maintained. Records must be kept for each required inspection to document the operation and condition of the applicable control measures, as well as the performance of the inspection.⁶⁷

It should be noted that the use of control measures is required independent of the informal verifications (or observations) of the subject equipment that are contemplated by the permit. Lapses in the use of such measures must be corrected by the Waukegan Station independent of the formal inspections that are required. Because the collective requirements relating to control measures should be adequate to verify implementation of the control measures, the imposition of a daily, formal observation is not necessary to provide Periodic Monitoring that satisfies Title V's requirements. For these reasons, the comment does not justify changes to the frequencies of the formal inspections specified by the permit.⁶⁸

Moreover, more frequent observations for visible emissions would not provide useful information. Neither the applicable standards nor the permit prohibit visible emissions from the subject equipment. For purposes of Periodic Monitoring, the absence of visible emissions is a criterion that will act to simplify the periodic inspections for certain equipment, such as the coal silos, which are located in a closed building.⁶⁹ For such equipment, the absence of visible emissions will likely readily confirm proper implementation of control measures. If visible emissions are not present from such equipment, either during an initial observation for visible emissions or following timely repair, it would also be unproductive to require observations for the opacity of emissions by USEPA Method 9, as are necessary for equipment from which visible emissions are normally present.

In summary, the approach to Periodic Monitoring developed for the subject equipment in 2005, centering on work practice requirements for the use of control measures, was both sound and practical.⁷⁰ However, consistent with

⁶⁷ The inspections must document the date and time of the inspection, as well as the particular equipment being observed; the "observed condition" of the control measures, including both the "presence of any visible emissions or atypical accumulations of coal fines;" a description of the "maintenance or repair" of equipment relating to the control measures, as well as a review of pending recommendations from prior inspections; and a description of any corrective action, including whether such action occurred within two hours of discovery and returned the operation to normal (i.e., no visible emissions). See generally, Conditions 7.2.9(d), 7.3.9(c) and 7.4.9(d).

⁶⁸ Formal inspections of the coal handling equipment, coal processing equipment, and certain fly ash equipment are required monthly pursuant to Conditions 7.2.8(a), 7.3.8(a), and 7.4.8(a)(i), respectively. Inspections of fly ash load-out operations are required weekly pursuant to Condition 7.4.8(a)(ii).

⁶⁹ It is also expected that visible emissions will normally not be present for a number of other pieces of equipment. The transfer point from the railcar unloading pit to the coal transfer conveyor is located underground. Fly ash is transferred from the boilers with pneumatic conveying systems that operate under negative pressure.

⁷⁰ The original 2006 permit established a comprehensive regimen for periodic monitoring. In its consideration of periodic monitoring for the subject equipment, the Illinois EPA recognized that varying combinations of components could serve to establish sufficient periodic monitoring, depending upon the nature of the subject equipment and the applicable emissions control requirements. In the case of the coal handling, coal processing, and fly ash equipment, this consideration necessarily accounted for the type, function, placement and locations of these units and the straight-forward nature of the emission standards that apply to these units. See, Response to Public Comments for CAAPP Permit Applications for Midwest Generation et al, at 33 (September 29, 2005) ("these requirements need not be identical for each unit" and "various

an earlier commitment to Region V, the Illinois EPA will re-evaluate this approach contemporaneous with the Re-opening proceeding.

combinations of the requirements will suffice depending on the nature of a unit and the emission control requirements to which it is subject.").

**F, ORAL COMMENTS DURING THE PUBLIC HEARING WITH RESPONSES BY THE
ILLINOIS EPA**

The following comments regarding the draft revised CAAPP Permit and Statement of Basis for the Waukegan Station were provided orally at the public hearing on September 2, 2015:

Oral Comment 1

Waukegan's water is remarkable, but its air is another story. One of the things I like least about Waukegan is Midwest Generation's old and dirty coal-fired power plant, which sits right on the shore of Lake Michigan.

It's troubling that this draft operating permit increases the startup duration by 460 percent. How many extra tons of pollutants might be introduced into our air if NRG Energy Midwest Generation is allowed to go nearly a whole extra day without monitoring or meeting permit emission limits?

It is further troubling that this draft permit relaxes critical testing, monitoring, recordkeeping and reporting requirements. How are we supposed to know when the Waukegan Station exceeds emission limits and endangers public health, if these standards are relaxed. How is it fair to the residents of Waukegan, and other communities in Lake County, if unsafe pollution levels are not caught for weeks or months because this permit allows NRG Energy Midwest Generation to file reports less frequently.

It seems like the provisions in its draft permit are designed to protect the interest of NRG Energy Midwest Generation above the interests of the people in this environmental justice community, Waukegan, which has been disproportionately burdened with pollution from this coal plant and five Superfund sites deserves better. I implore the Illinois EPA to step up to protect communities like Waukegan to the fullest extent possible.

Please expedite a strong, effective operating permit, so residents like me, and people who visit Waukegan, can breathe easier while enjoying our lakefront treasurer.

Response:

Oral Comment 2

This is not the year 1902. We know that the sky is not limitless, and we know that the lake cannot carry away everything we deposit into it. We cannot feign ignorance of the environmental and economic costs that will continue to fall upon the citizens of North East Lake County, if the operating permit for the Waukegan Station is renewed as currently written.

Today, we who live here are paying the tab on an environmental legacy resulting from short-term decisions made over decades. Ignorance of the long-term toxic events certainly played a role, but all too often economics and expedience were the driving factors in those decisions.

It's long past time we stop subsidizing corporate profit margins at the expense of our health, quality of life and ultimately with our tax dollars. It is 2015, and we know better. Therefore, I ask that the Illinois EPA redraft this permit to include the current air quality standards, and stronger inspections, monitoring and recordkeeping protocols to ensure compliance.

Response:

Oral Comment 3

When I hear the experts from the American Lung Association or Respiratory Health Association talk about the one-in-three asthma rate in Waukegan, and the emergency hospitalizations, and the other grim data that they give us in Lake County, I see my children. I see their faces. I know that misery is agitated and worsened by the dangerous air pollution from sources like the Waukegan Station. It is the largest source of air and water pollution in Lake County.

Midwest Generation has been using Waukegan as a sacrifice zone for nearly a century. Year after year I see the wreckage, and that's why I'm here tonight to oppose this Clean Air Act permit as drafted and ask you to go back and strengthen it.

Four of my second graders this year have inhalers, and this is not new. I must speak on behalf of these students and their families, who may not be here tonight because we are having another poor air quality day here in Lake County. Their critical breathing issues often impact their health, their time, their wallets, as they pay for the inhalers and nebulizers.

In addition to the public health concerns, I have academic concerns. I read an article this week highlighting the connection between air pollution and poor grade-point averages in fourth and fifth grade in Texas, but there's plenty of anecdotal evidence that says the same thing is true here in Waukegan and Lake County, given all the hospitalizations and missed school days. This is not a surprise to my colleagues or me.

Tonight we have an opportunity and an obligation to act on behalf of our children and our communities. The draft permit in consideration tonight is out of date, and it's only covering critical measures through the year 2006, before my second graders were even born. Since NRG Energy Midwest Generation took over this old dirty coal plant, they made the minimal reductions to their sulfur dioxide and nitrogen oxide emissions, the bare minimum. Communities like Waukegan and Zion deserve more than the bear minimum to be fixed. Our children, our communities, and our families deserve to be protected to the fullest extent.

I actually see cumulative effects of particulate matters straining those little bodies in my classroom. It impacts their attendance in school and when they are in my class, they have the inability to focus. The worst thing is I don't see them get enough rest at night where their bodies can repair the daily assaults from inhaling coal particulates every day.

This fall, I'm seeing cross country and soccer teams outside, and even residents like me. A lot of us like to be outside in our beautiful Lake County air, but when the air is polluted or we are dragging coal particular matters deep into our own lungs. We're out exercising, trying to be healthy, but ironically we are becoming the air strainers for energy.

The P in IEPA does stands for protection, and I'm asking on behalf of my second graders that you make this operating permit as strong as you can. Put real teeth into it for my second graders. Make NRG Energy Midwest Generation accountable to us. We have all suffered enough.

Response:

Oral Comment 4

Our family of four have developed asthma symptoms since we've moved to Lake County 20 years ago. My daughter and I need to use high-priced inhalers daily, which we really can't afford. We also use an immersed C inhaler, when we are feeling badly, and which actually coincides with getting action alert text messages from the Sierra Club. I can't do anything strenuous outside, not even mowing my lawn on those days. My daughter can't ride her bicycle to work or exercise for more than a few minutes.

I tend to rely on reports. So in the case of the Waukegan Station emissions of coal soot, SOX, NOX, and other toxins, we would like much more information. I have been a data freak, since working in the chemical industry a long time ago, and I want to know what the continuous and cumulative output of those pollutants are as they come out of those smoke stacks. Anyone living in the immediate area of the power plant should be able to use that data to possibly file a lawsuit against the power plant for violating the emissions standards that the Illinois EPA and USEPA have established for cumulative and historical output of those emissions.

For shutdowns, the continuous snapshot of those emissions should show low emissions while going full bore. It would show large emissions and the cumulative would show all the exposures to the population. So continuous monitoring is key. Cumulative history is key, and the data should be available to the county and the state.

I feel the power plant has the utmost responsibility of informing the EPA and the public exactly how it is affecting the air quality in Lake County.

Response:

Oral Comment 5

I want to start by saying thank you for giving us this forum to express our concerns about the Town of Waukegan and the Clean Air Act permit for the coal-burning power plant in our backyard. I am here today to oppose this draft permit.

We in Waukegan have a proud history, once the third largest city in Illinois. Waukegan was once home to many major industries, especially along Lake Michigan and our busy booming downtown, but much has changed nearly 40 years since I graduated from Waukegan High. Waukegan is not the same. If you go downtown there are many deserted streets, empty parking lots, vacant stores and offices, and long the lakefront, abandoned plants. All of these things are stemming from Waukegan Station, still putting out pollution, just one mile north of the swimming beach.

Last year, I visited First Bank on Genesee and Water Street, my dad worked there, right next to it there was the Sauter Building, a 120-year-old building, and this spring, the building was demolished. Now the only building in that block is the First National Bank. That moment I realized that I need to work on providing better opportunities and a better city for our next generations, and I need your help.

Waukegan's future depends upon a clean environment, where our children and families can thrive and business can grow. Why would anybody want to move to Waukegan when Lake County received an F from the American Lung association for air quality in 2015, and the largest source of air and water pollution is the Waukegan Station right here on the Waukegan lakefront.

NRG Energy Midwest Generation has installed minimal pollution controls for sulfur dioxide, they do little to nothing to control nitrous oxide and carbon dioxide, and they have been operating without proper permit for nearly 10 years. Why would families move to Waukegan, if you approve the Clean Air Act permit that only meets outdated 2006 standards?

President Obama calls out that time is now, to simply close down these old coal-burning plants or make them meet the highest environment standard. As you know, Chicago closed down two coal power plants in the last few years. We can do the same, or make sure NRG Energy Midwest Generation meets the new standards. I'm here today to ask for your help. Communities like Waukegan should be protected to the fullest extent possible. Illinois EPA please go back and draft a permit to meet those highest standards.

Response:

Oral Comment 6

We have too much air pollution here in Waukegan. A lot of us get sick up here in Waukegan. Sometimes it's because of the stuff we eat and drink, and I wonder sometimes is it Abbott Laboratories dumping. We get ill, and we wonder if it's the water department, what they're doing or what they're not doing.

I don't know, maybe it relates to the coal plant. Sometimes when I look out into the lake, I see different colors of water, usually green or another color - gray or dark brown. I thought it was a sand bar, but then Alex told me about this place, and now I wonder if it's coal going into the water somehow. It should be checked, I would think.

The main point is that I'm opposed the permit as drafted. I implore IEPA to go back and include critical air quality standards issued since 2006 and propose an up-to-date permit. The final permit should also include the most stringent requirements for monitoring and reporting of emissions so that Waukegan, and communities across the county, are adequately protected from harmful pollution, whether it goes into the air, to the water. It's real important. We need to know that if lots of people go to the hospital sick, do they contact the health department and then contact the coal plant, if it's the water or air?

Response:

Oral Comment 7

I'm speaking just as an impacted resident and concerned citizen. One of the impacts is I have been diagnosed with a mild case of asthma. As a former high school teacher in Lake County, I saw the impact of more severe asthma in teenagers who suffered from it. Waukegan has a disproportionately high number of children, who suffer from asthma, which I think is associated with polluters locally.

I would like to tell why I oppose this draft permit. I believe that it will allow the power plant to violate the Clean Air Act. The Illinois EPA needs, in my opinion, to environmentally protect. It doesn't make any sense to allow not only excessive pollution, mercury, and SO₂, and other pollutants, but a reduction in the reporting by the plant operator to report the amounts of pollution. Waukegan suffered, before the Illinois EPA existed, from environmental degradation, but now we are in the area where the state and Federal EPA are charged with protecting the environment and protecting residents, not only myself, but all of the residents and visitors here.

A clear meaning of the Clean Air Act and of the Illinois legislation, I think, dictates the need for a stronger permit that really regulates. Of

course the plant operator doesn't want to be regulated and they negotiate, but we need a negotiator on behalf of the people who live in Waukegan and elsewhere in Lake County, and I appeal you to please step up and do a good job for environmental protection in Illinois and particularly in Waukegan.

Response:

Oral Comment 8

I'm dismayed by our community's repeated air quality grade of F from the American Lung Association. I'm saddened and angry at how the asthma rates that others had alluded to the before me, and I'm appalled that Waukegan Station has been running for more than a decade without an operating permit, as required by the Federal Clean Air Act. Clearly given the poor quality of our air, and the negative health effects that can be attributed to it, we need to have a permit in place, and it needs to be stronger than the draft that is under consideration this evening.

I am here to ask the EPA to amend the permit so that it includes the higher air quality standards put in place since 2006, and to approve an updated permit quickly so that the community will be able to know the plant is engaging in the more timely monitoring, recordkeeping and reporting necessary to ensure that it stays within current environmental law.

More than 62,000 people live within three miles of the Waukegan Station. This includes myself, my spouse, our adolescent, and many of my students and their families. It is not uncommon for me to hear from students who need to miss class on a given day because of their child's respiratory illness. We in Waukegan have been too long overburdened by pollution from this coal plant and from the Superfund sites in the area, and yet sulfur dioxide controls installed are just the minimum required. The plant does not have top-quality nitrogen oxide controls to lower ozone pollution or the strongest controls to deal most effectively with small particulates.

This community deserves better and an important step in getting us there is an operating permit that includes the most stringent requirements possible under current law.

Response:

Oral Comment 9

I'm here as a mother who wants to make sure that she will leave a healthier planet for her children. As a Catholic, I would like to share

with you what Pope Frances shared, and he indicated regarding weather climate and the impact that it will have on the perseverance of our future generations. This is a moral obligation. This planet is suffering like child birth pains. Let's not forget that we ourselves are the earth. The Pope also said that we have to stop the destruction of our planet for our own sake. It is everybody's home, and we have a calling to protect it. There is no time to waste when we see that the air and the water are being poisoned. Our families' health is in the middle. Many children in our community are suffering asthma and many more ailments.

On April 24, 2010, my son, a newborn of only five weeks old, suffered a stroke. Like the case of my little angel, now he is suffering. His physical health is being impacted. There is no money in the world that can pay health. Why not improve the quality of water and air for the sick ones, and for those who are not that sick, and for those who are healthy, for that matter. It is time for Waukegan, Lake County and our state to come together to bring our state to a more modern state, and make sure that all our communities have a shiny future.

We know that sound laws have been passed since 2006. We want to make sure that those laws are enforced in Waukegan. This community is mostly Latin, low-income community, a community of environmental justice; however, Waukegan is a community that is suffering because of an old and filthy coal power plant, and with a permit that has no expiration date. That is not fair.

I ask that NRG Energy Midwest Generation start withdrawing their permit application and closing down the Waukegan Station. It is time for that.

Response:

Oral Comment 10

I would like to say that Lake County residents play by the rules, and they want the best for their health; but the Waukegan Station has been operating for nearly a decade without a proper permit.

It's time for the Illinois EPA to enforce the Clean Air Act with an up-to-date permit with clear strong limits on pollution that the Waukegan Station smoke stacks put out every day.

I further urge that operating permits be issued speedily and with the utmost stringency from state and federal laws created since 2006, such as the multi-pollutant standard, the Clean Air Interstate Rule, the Mercury and Air Toxins Rule, and updates to the national ambient air quality standards regarding a one-hour limit for sulfur dioxide and nitrous oxide releases.

I request that the IEPA respond to my request to issue to the general public, through a press release to all Lake County media outlets, the

information that there are currently no operating licenses issued for these aforementioned standards, and those standards are yet to be imposed on the Waukegan Station.

I would like letters issued to all Lake County mayors and Lake County elected officials informing them of these standards, and that Midwest Generation is not presently regulated by operating licenses for these standards, and they release antitoxin output from the Waukegan Station.

As a life-long resident of Waukegan, I pray that the IEPA take very seriously the mandate to provide our citizens with clean air to breathe.

Response:

Oral Comment 11

I am a Sierra Club leader and volunteer, and I'm here on behalf of 2,000 members and more supporters throughout Lake County, who are relying on the Illinois EPA to keep our air safe. I come here frequently to enjoy Illinois Beach State Park. I was here a couple weekends ago to clean up the beach, and it was great to get the beach clean. The only thing we couldn't cleanup was the power plant at the north end of it, and that's again why I'm here.

I have many friends. Many of them have spoken tonight, many more who live here in the shadow of Waukegan Station. Tonight I listened to your opening and repeated remarks, and I looked at the documents that you brought, like this one, and I'm convinced that you and I came to different hearings.

You came to a hearing to serve the company indicated on the front of this Basis Report that hasn't been operating this coal plant for almost two years, and I came to a hearing to find out whether the Illinois Environmental Protection Agency is protecting and supporting my right to know whether the air that I and my friends breathe is poisoned by the Waukegan Station.

You seem to have come to serve Midwest Generation and to announce what they told you to do. I came originally to ask this question - If I feel that my health is impacted by pollution from this plant, will the reporting, recordkeeping and monitoring that you've agreed to with this company be available to me and actionable on a timeline that allows me to protect health?

How long will it cost for me to protect or to even benefit on my right to know? And further, to take advantage of Title 5, which I noticed you can't didn't manage to say, and participate in enforcement of the pollution control laws of this country.

Response:

Oral Comment 12

I'm here as a Latina, as a business woman, as a soccer coach and on behalf of 1,000 soccer players in Waukegan; and also as a person involved in the community for years, soon to also open several new businesses in downtown Waukegan, including a TV station, radio station that will be aired in 47 different states and three different countries in English and Spanish bringing over 500 new jobs to Waukegan, good-paying jobs that won't pollute our air. I graduated from Loyola Law School and been involved in federal lawsuits, including -- all of them including a violation of civil rights for minorities. And as a Latina, I ask why would the EPA ignore the adverse public health harms to so many low-income residents, minorities, children, senior citizens. Waukegan, which the racial makeup is approximately 90 percent minority, and especially when there is so many benefits of cleaner air.

Waukegan, which is an environmental justice community, deserves to be protected. Waukegan -- not only Waukegan, but all communities deserve clean air. And despite all the monies involved, and we are aware of all those unscrupulous organizations that politicians are receiving money from Midwest Generation Company, let it be known, gentlemen, that Waukegan's air and our health of our residents is not for sale.

For these reasons, the Illinois EPA should scrap this draft permit. Waukegan residents, we're ready to do what we need to do, just like in Chicago, to have our clean air, and I have a question for you.

I ask has the EPA received any letter in support or against this issue from our mayor of Waukegan, Mayor Motley? What is his stance on this? Because you know what, Waukegan residents, we want to know.

Response:

Oral Comment 13

I'm a member of Mom's Clean Air Force. We're a community of more than half a million mom's nationwide. We're fighting for clean air and a safe climate for our kids. Here in Illinois, we have over 20,000 members. Air pollution clearly isn't contained or restricted to a certain area. So as a resident of Lake County, I wanted to speak out not only for our membership in this area, but for my own family and my own children. I'm

here on behalf of our 2400 Lake County members to tell you how concerned they are about this coal plant and its continuing health effects.

For our membership, and others with asthma and respiratory illnesses, especially children, every hour and minute of exposure to these noxious chemicals makes a difference. In 2014, the pediatric asthma survey by the Lake County Health Department showed over 30 percent of children surveyed were diagnosed with asthma, or worded as asthmatic symptoms in Waukegan and Zion. That is over three times the national average for a child with asthma. Asthma isn't just an inconvenient illness. It means missed school days for children, missed work days for parents, higher hospital and doctor costs, and economic repercussions that expand into the entire household.

To add to that, as it's been mentioned, Waukegan is a community that has been disproportionately burdened with pollution. That is unacceptable, and in my opinion it's exacerbated by the lack of modern pollution controls that this plant should have. They only have the bare minimum.

This permit, in its current form, is unacceptable as drafted. It's outdated, and it fails to set strong enough requirements for monitoring to adequately protect our communities.

It is as simple as this: Cleaner air means a healthier community and more prosperous future for everyone in it. It seems there should be no question about providing a permit for this plant that requires it to function in a way that is the least damaging to the community around it.

I implore the IEPA to go back and include critical air quality standards issued since 2006 and promptly issue an up-to-date current permit.

Response:

Oral Comment 14

This is my six-year old grandson. As the second-grade teacher came up here and said they had poor air quality. This is what he needed. He could not ride his bicycle. He could not play with his friends. His air and his health is not for sale. I have two grandchildren and I, myself, use an inhaler. Our health is not for sale.

This is very serious for us. I don't want to bury him. He hasn't even begun his life. He's a very intelligent little kid. See his face? Beautiful little boy. We really need to do something about this.

To see a little six-year-old child to sit there and explain to him why he needs this, what it does to him long term, the hyperness that it causes, because we refuse to do something about our air.

I implore you to look this over and just do what is right by our community. I'm a life-long resident, born here, raised here. This is a bit much. Thank you.

Response:

Oral Comment 15

I am representing myself as a resident of Lake County and someone with respiratory issues, as well as the mother of a child with asthma, and also speaking on behalf of Midwest Sustainability Group, formerly Incinerator for Lake County.

I'm grateful to the EPA and the important work you do. You are the firewall between we the people and the polluters. I, along with all of my colleagues who advocate for healthy communities and environmental protection, have supported, and continue to support, more funding for your agency.

That said, I believe that your efforts, with respect to this facility, and this permit in particular, have fallen far short of the mark. I realize that Illinois EPA has a funding shortfall that leaves you unable to stay current with permit renewals, but taking nine years to get to an operating permit for an old dirty coal plant, which is by far the major polluter in a county that has very poor air quality, and a county that has also a higher-than-normal pediatric asthma rate, is unacceptable and unfair to the people of the surrounding community and to the people in the surrounding air shed.

The fact that this has taken so long to get to the operating permit is bad enough, but then to use the permit draft from nine years ago, without bringing the permit up to date with respect to current regulations, seems unconscionable.

Given the backlog of permit renewals, when will the next opportunity be to bring these permits up to date with clean air regulations? At this pace, it could be another decade before you are able to just bring the permit up to today's standards.

That said, I oppose this permit, and I ask that you issue a new one that is strong and incorporates up-to-date standards that adequately protect our communities and our health.

I always hold other levels of government up to the standards of the great work that Illinois EPA generally does, with respect to sincere efforts to engage the public. However, as someone who has been in many EPA hearings, I would like to comment that it's not acceptable to be having tonight's hearing up in Zion and not in Waukegan, where it would have been more accessible to the people in the impacted community, which as you well know is an environmental justice community.

As such, considerable effort should have been made, and you should go the extra mile, to engage the community and make it as easy as possible for them to participate and determine their fate. Lake County Board Chairman Lawler offered to help facilitate securing a location in Waukegan, but that was not accepted by your staff, and I would like to know why you have chosen this location and not a location closer to the impacted community?

Lastly, I would like to comment that as a person with adult onset asthma, and the mother of a child with asthma, I implore you to insist that the Waukegan Station operate within its operating permits which are up to date, in their criterion and to enforce those permits. Permits that are not enforced are rendered meaningless.

Last summer, after two ozone alert days in a row, I had to rush my child to the ER and stand by as she struggled to breathe. That is an experience that I wouldn't wish on anyone. Now I have to limit her outdoor play on many summer days, when my county has an ozone alert; and I would argue that being able to play outside on a beautiful summer day is her birth right, as well as the birth right of all the children in the area within the Waukegan Station air shed.

Response:

Oral Comment 16

I'm really concerned about the outgrowing that Lake County has, as well as the high asthma rates, and we need the most stringent possible regulations for this plant. One thing, this permit was actually applied for in 1995. So, it was 20 year ago that this plant applied for a permit. I can't believe 20 years later and an operating permit is not in place, and I oppose this as drafted. This permit is weaker than it was, and it needs to have current standards included. Since we have had to wait since 2006, it should have the absolute most recent standards included.

At the beginning of the meeting, it was mentioned that, the boiler startup time was increased. That was from 6 hours to 20 hours for Unit 7 and 23 hours for unit 8. You said that was because of Midwest Generation, but was that independently verified, or is it just what they said? Why does it need to go triple the time?

Immediate reporting for opacity over 30 percent was changed from five to eight or more 6-minute averaging periods in a two-hour period. That is quite an increase in timing.

Opacity observation testing was changed from annually to every three years. Annually is not that often. Why is it moved to three years?

This plan allows for alternative fuel, such as tires to be burned. Tires have additional toxins. Is Midwest Generation burning tires; and if they

are not, why not take it out of the plan? If they are burning tires, what additional controls are in place to handle the additional toxins?

The SO₂ controls recently put in were not the highest quality to meet the highest standards. Do we know what percentage of reduction there is on SO₂? Is reporting available yet for that?

So, for the most part, what I would like to see is that this permit be as strong as possible, include current standards, and this permit needs to be issued as promptly as possible and implemented immediately, because we've waited way too long for this.

Response:

Oral Comment 17

I am speaking on behalf of the League of Woman Voters, the Lake County Chapter. The league is a national nonpartisan political organization that encourages informed and active participation in our community. We work to increase the understanding of major public policy issues, and influence public policy through education and advocacy, which is why I'm here.

The league has been at the forefront of efforts to protect air quality, and for decades this work has been effective for regulatory programs. Since 1971, the league has pressed for full implementation of the Clean Air Act of 1970 and for strengthening amendments. Additionally, the league will oppose the continued extension for deadlines for meeting ambient air quality standards. The league pushed for the passage of 1990 Clean Air Act amendment. This included legislation mandating major reductions in sulfur and nitrogen oxide emissions through the use of best available technology and energy efficiency.

Prior to the 1990 Clean Air Act amendments was the Title 5 operating permit program. The program required all large sources of air pollution to obtain a federally-required permit that applies to the day-to-day operation of the facility. The purpose was to increase facility compliance with air quality standards. The Waukegan Station has been operating without such a permit. Now the IEPA issues a Title 5 permit with 2006 standards. This is unacceptable. The permit should be up to date, and include air quality standards since 2006.

The League of Women Voters requests that the Illinois EPA stay strong and unambiguous to control requirements in its permit for the Waukegan Station. The permit must include strict requirements for monitoring, inspections, and periodic reports to assure the public that the facility is in compliance.

The permit must provide public and government regulators, with the ability to enforce the permit through the courts with substantial fines for noncompliance. The permit must be understandable by the public, and

the permit fee should cover all reasonable direct and indirect costs of the permitting program.

As a Chicago metropolitan region, the State of Illinois has federal air quality standards for harmful ozone and particulate matter pollution. It is imperative the polluting coal plants in the area comply with the Clean Air Act, with the added impact of climate change, air pollution must be limited.

Response:

Oral Comment 18

As the Waukegan Station cannot meet the 2006 requirements that exist today, they should not be allowed to pass their cost onto the people, while they continue to operate and make a profit. These costs include medical costs, as we've heard tonight, costs for mercury pollution. If we look at the last four years, the amount of mercury that was released into the Great Lakes, if we look at that same amount for the next six years, they would add 930 pounds of mercury into Lake Michigan. And I have kids, and they want to go fishing. It is not healthy for them to eat the fish, et cetera.

We also see they would be able to continue to produce the acid rain, increased costs from floods and draughts and forest fires. Recently the EPA has issued the clean power plant to reduce carbon dioxide and other greenhouse gases. The EPA needs to be applauded for this plan. It will reduce energy costs eventually and also reduce the future cost in future generations.

In this next six years, we're going to see about -- in the last four years, we've seen 15,000,000 tons of CO2 going into the air. In the next six years, we will see if that trend continues to 23,000,000 tons of CO2. That is 46 billion pounds of CO2.

Now that's the teacher in me. Each square inch of a year's atmosphere weighs 15 pounds. So if we take that, the permit will allow for three billion square inches of the earth's atmosphere to be completely converted to CO2, if we just made a call from the surface to space. Although the permit was only the last six years, that CO2 is going to last over 100 years.

Your current EPA administrator, Dean McCarthy, in a webinar attended by myself last week, said we were the first generation to know about climate change and the last generation to do something about it.

This plant is outdated. It's pollution control systems are outdated and fossil fuel will soon be also outdated, and we have economical alternatives available today. The sooner we move to those, the better we will all be in our future generations.

Response:

Oral Comment 19

I am representing the Sierra Club here tonight. I have to start out by saying that I'm very troubled, Hearing Officer Studer, by your directions tonight. I'm very troubled that you are discouraging members of the public from speaking, if they were going to be repetitious. There are maybe 150 members of the public that have shown up here tonight because they have concerns. They want to be heard. They want IEPA to hear their concerns in the same fair and appropriate manner that it hears industry concerns.

I expect that it took IEPA hours and hours, if not days and days, to meet with Midwest Generation and hear Midwest Generation's concerns, those that were resolved in this permit that we're here for tonight.

You have given the people here four minutes. Each person here four minutes is all they were asking for, but you have discouraged them from even using their four minutes, if they were going to be repetitious.

So I would encourage the members of the public actually to take their four minutes, even if they're going to be repetitious. They have taken the time to be here after work, in the evening. They are not paid to be here. This is not part of their job. They are taking time away from their family and their personal lives. There is even a mother here who was rocking her baby to sleep, just so she could be here and be heard by IEPA here tonight.

This is a public hearing. The public deserves their four minutes, even if they are going to be repetitious.

I also am now going to repeat myself. 12 years ago I argued that this permit should have a compliance schedule for opacity violations. Several years later, I repeated that argument when the permit was up for a draft again. In 2008, I argued that same issue to the Seventh Circuit Court of Appeals, and I lost. Here in 2015, I'm here to make the same argument again, but I'm not insane. Insanity is doing the same thing over and over again, but expecting a different result. I'm not insane. Things have changed. The USEPA has issued a notice of violation to Midwest Generation for those opacity violations. The Attorney General of this state and the Department of Justice have brought an enforcement action for those very same violations. Now my question is will IEPA follow federal law and include a compliance schedule for opacity violations in this permit? In 2003, we had 18 months of data that showed that the Waukegan Station exceeded their opacity limits nearly 500 times, 300 of those the company even agreed were not exempt.

If you do the math, 12 years at the same rate would mean that there are now 4,000 opacity violations at the Waukegan Station, 2400 that the company would not be able to claim are exempt. So tonight, part of your directions indicate that the permit will be issued, if the record shows that the facility will comply with the applicable laws, regulations and requirements. It won't. The record shows that. We have 12 years of self-reported violations that show that the company is not complying with state regulations. We have a notice of violations from the Federal Government saying that the company has not complied with regulations. We have a state and federal enforcement action. That says the company is not complying with state regulations. There have been two cases that said once you have an enforcement action, once you have a notice of violation, you have to include a compliance schedule.

So it is not just the environmental groups here claiming that the record shows opacity violations. We have a state and federal enforcement action. So I ask now that IEPA has a record of those violations, will it include compliance schedule?

Response:

Oral Comment 20

I'm attorney at the Environmental Law and Policy Center. So I just wanted to draw your attention to a few of the many, many, many inadequacies in the updated permit, and there are a lot of these standards have been weakened to the benefit of Midwest Generation.

These standards include testing standards, inspection standards, evaluation standards, recordkeeping processes, reporting processing and oversight for coal handling, coal processing and fly ash handling equipment. All these lead to more dangerous operating conditions. So to start out, for these weakened testing, inspection, and evaluation standards,

I wanted to draw your attention to Condition 7.1.7(a)(i) - This increases the length of time following effectiveness of the permit for Midwest Gen must conduct it's PM conditions measurements.

Next step is Condition 7.1.7(a)(ii), which increases the trigger for PM emissions testing and operating at higher loads.

Next is Condition 7.1.7(b)(i) of the previous permit required PM and CO testing be conducted at maximum operating loads. Now they only need to be conducted at 90 percent of the operating load.

Condition 7.1.7(b)(iii)(B) let's Midwest Generation determine compliance about using the average of three valid test rounds when calculating measurements of CO and PM emissions. This makes it so they can hide spikes and exceedance type of emissions because they are averaged out.

Next Conditions 7.2.7(a)(i)(A) through (B), 7.3.7(a)(i)(A) through (B) and then 7.4.7(a)(i)(A) through (B). These increases the time between opacity observations conducted under Reference Method 9 from the previous permit.

Condition 7.1.6 reduces the nature and frequency of combustion evaluations.

And now moving on to recordkeeping inadequacy,

Condition 7.1.9(c)(iii), Midwest Generation must keep records of certain information when opacity exceeds 30 percent during three-hour block-averaging periods, but the applicable PM limit should be based on hourly averaging per 35 Illinois Administrative Code Section 212.202.

Now reporting inadequacy

Condition 7.1-10-2(d)(iv)(A)(4), Midwest Generation no longer must include in its quarterly operating reports the percent opacity for each 6-minute period, during increases in opacity. Now instead it relies on a 3-hour averaging calculation.

Condition 7.1.10-3(a)(i), increases the length of time during opacity exceedances before Midwest Generation must report the exceedances. It used to have to be 30 minutes, now it's 48 minutes or an increase of 18 minutes of time when an exceedance is happening.

Condition 7.1.12(a)(ii)(E), Midwest Generation no longer needs to provide IEPA with 15-days of notice before changing their procedures associated with 35 Illinois Administrative Code Section 212.123(b).

Now finally, inadequacy pertaining to oversight for coal handling, coal processing and fly ash handling equipment.

Conditions 7.2.2, 7.3.2 and 7.4.2 eliminate a lot of the equipment subject to regulation pertaining to either emission.

Condition 7.2.8(a), 7.3.8(a) and 7.4.8(a) no longer requires inspections by people not involved in the day-to-day operations. This means that inspections are being conducted by folks that have a self-interest in passing these inspections.

And then finally,

Conditions 7.4.3(b)(iii), 7.4.11(c) and 5.2.4, when you read them together, they no longer give the public the right to comment on Midwest Generation's fly ash contingency plan.

Now I know this was a long list, but it's actually not even close to how many regulations have been downgraded from the last permit to this permit.

Response:

Oral Comment 21

This is my son, I am born and raised in Waukegan, and I shouldn't have to sit inside the house and wonder whether it's safe to take my child outside to play or not. Like thousands of people in Waukegan, I have asthma. My asthma has always held me back through all my childhood, and it was worse when I got to 20. I live right up the street from the coal plant. It's the largest source of air pollution in my community, and I know it's impacting the air I breathe. I want my son to have clean air so that he can have the opportunities that I didn't have. It's time to put people before profit. I cannot believe that this plant did not have the required permit for its air pollution. This puts many lives in jeopardy.

I ask that you issue a stronger up-to-date permit to protect our family and our community.

Response:

Oral Comment 22

My family moved here in '66, and I graduated from high school and went to University of Illinois for five years, and worked in Chicago for five years. So I've come here on weekends and visit, and then I moved to another state, and now I've8 moved back here for two years. And I'm shocked to learn about this, and I don't think the public should have to be explaining all the violations, and I took many courses on environmental issues.

When I moved back here, I kept asking people, "What are those tall smoke stacks?" I see smoke coming out of it all day and at night, and it's a heavy, dense smoke. And most other places that have enacted laws don't have this white smoke pouring out. So it's obviously working at night and during the day. So I want the city of Waukegan to grow economically, and I just want to say that I'm shocked to learn that this is going on right here, and I hope to live here for many more yours

Response:

Oral Comment 23

I was born in Chicago, and I was raised here in Waukegan. I studied sustainable community development and minored in sociology, social justice. You know, we have used the proposed operating permit, and we have used the word complied. Just as we had said, NRG Energy Midwest

Generation has already showed it's not complying. I am just one individual representing the 76 percent of Latino and African-American residents here in Waukegan. This is a class. This is a race. This is an environmental issue.

So those three things are all connected looking at inequality, just how as our country has risen, and this is just a continuing issue of many things. We have talked about asthma issues, and my whole entire family suffers from and it still continues here. I have heard people say, you know, "I have a harder time breathing at night." Obviously because there is a lot going on in this town because of the class, the race and the environmental issues. Because we are minorities, so we are allowed to be used by NRG Energy Midwest Generation to just abuse our race, and this is a public health issue.

I'm also disappointed the USEPA community engagement plan for Waukegan fails to inform the community of these environmental issues and just issues overall in our community. We need to start thinking generations ahead, not just a few years ahead, because your grandchildren, you are residents here, you are working for the IEPA, and I care for the environment. So we care for the environment. Mother Earth needs us. We are here to protect them. We will not thrive if we don't comply with Mother Nature.

We need to make sure that environmental issues are taken into consideration. By allowing NRG Energy Midwest Generation to continue, this just informs that we are not caring for the future. We need to make sure we have clean air. There is plenty of examples that have showed sustainability and thriving. Why are we complying for profit when it should be, you know, for people? We need to make sure that we are taking care of the environment.

I have been raised here in Waukegan. I had studied sustainability, and I am seeing here that by allowing NRG Energy Midwest Generation to move forward, it's not helping everyone. It's not helping anyone or everyone. We're hurting ourselves by continuing to hurt the environment and just temporary issues here that have already been issues in the past. So please take action to actually think ahead, think several generations ahead and not just for profit or4 anything that might just be short term.

Response:

Oral Comment 24

Empathy: Understanding and fully comprehending other's feelings. Please have empathy of what I'm about to say. My mother is an environmentalist. I live in Great Lakes, Illinois, and attend Freemont Middle School. I already know what I want to be, a vet. I have four animals at home, and hope to have plenty more in the future. Seeing dogs suffer makes me want to help them. So I've got to know science and math a lot. Science is

about 75 percent of what is based on the environment. In considering my mom is an environmentalist, I go to meetings and I learn things.

The coal plant makes me think of who it hurts. I have asthma, and because of ozone alerts, I end up in the hospital because I can't breathe. Last summer, I was in the hospital almost five times because I couldn't breathe. Can you imagine it's not a pleasant feeling, and the coal plant just makes that worse. More ozone alert days, more hospital visits and no more dogs. I told you how much animals mean to me. There are thousands of animals and different species that live next to the coal plant on Lake Michigan, and they should be protected from the air pollution, just like me. We need to do a better job of protecting our environment. Please do your job and protect the air we breathe.

Response:

Oral Comment 25

I'm here on behalf of my husband and my daughter. My husband was born with asthma; however, he grew out of it, and we purchased our first home in downtown Waukegan in June of 2010. Since then, my husband and my daughter have been treated at Vista East Hospital a total of 12 times combined, to have breathing treatments just so they can control their asthma that was never an issue until we purchased our home. I am asking you today to please be in compliance; and at this point, I feel like it's inhumane. As a mother, I've watched my daughter gasp for air plenty of times. She's waking me up in the middle of the night. Her lips are blue, and we've got to drive with two smaller children in the car to the hospital, just to make sure that she's okay. I've watched my husband lie on the floor on his back with his arms over his head, just trying to catch his breath. I am asking you, and I'm begging you, to please come into compliance and have respect for the people in our community, especially mine.

Response:

Oral Comment 26

I represent the local media. I am a program director for EBN, which is a local radio station. I interviewed Alex Morgan. I interviewed quite a few people regarding this. I'm here as a representative of the media, but also as a mother, and also as a health advocate. In my program, you always hear me talk about health.

So this is quite disturbing to me, I have to say. I've been controlling my, how should I put this, my anger, but the sense that all three of you and the whole EPA thing know about this. This is not anything new. We're all here. We are all like parents. We're all repeating the same thing in the sense of information that you already know. When will the assault stop?

Our food is assaulted by GMOs and chemicals. Our water is assaulted by fluoride. It is not necessary, which causes fluorosis, which is a very dangerous disease. Our air is also contaminated. When does it stop? Gentlemen, that is my question. First of all, lack of information. Had it not been for Alex coming on my air waves, and us informing the public, do you not send out information to the local media? Is there no open communication? Had it not been for this wonderful attorney, that I think I'm going to interview her as well and her friend here, both of them who are really putting out some facts. This is not fantasy. This is not a game. We're talking about our children's health. As a health advocate, and also a vegetarian, I am probably one of the few parents that actually do things that are to prevent my children from getting sick from the mercury contamination, which is a heavy metal that causes brain damage. Let's not talk about what it can cause to your lung and health. What I do as a mother, I have my children before school take Omega 3. Certainly not fish from Lake Michigan, absolutely not. You know, we eat extremely healthy. We eat organic as much possible.

All of this is also an expense that I think for once a corporation will think of its community and not its bottom dollar and lining the pockets of certain politicians and organizations. I think we would see a difference. Do any of your gentlemen live in area? Do you have children? Do you have grandchildren? That's my question. This is about consciousness. This is about a moral consciousness that I strongly feel that the corporations do not take into account, the agencies, because this is strictly about politics.

That is exactly what this is, and it's also about keeping people ignorant, not providing the information that they truly need to know, until we have wonderful people that all came here to speak and share those concerns. There is a saying in Spanish (whereupon, the speaker spoke in Spanish), which means this seems to me what the cat covers up. That is exactly what it is. I'm here. I'm upset. I was not even going to speak. Why? Because I have one of these in front of my face seven hours every day, because I do two radio programs every day. I thought let's give somebody else an opportunity. You know what, I'm feeling the anger inside of me. And I want to say, with all due respect, I don't really think you deserve the respect, due to the fact -- first of all, what I'm hearing about the permit is unbelievable, considering a permit that's not even up to date, allowing a plant to be functioning for so many years.

Gentlemen, you were children once. You have children. Do you live locally? Do any of you here live locally? Are you a Waukegan resident? Are you Lake County residents? I would say there is no answer to that because you're not answering questions tonight. So, therefore, I will leave a card. You are more than welcome -- I invite you openly in public to come to both radio stations that I am involved with to speak of this

in a more open forum and to inform the minority community. Because you know what, it's the minority community where many times are used as guinea pigs in many levels, to vaccination, to the mercury levels in air, to the GMO, to the contamination and insecticides and everything else that is in our food.

I think it is about time to have an open book here. If you are not going to do anything, just say it. It's just really that simple.

Response:

Oral Comment 27

I am 23 years a resident of Waukegan, and before coming here and becoming a resident, I've been living in other countries in the world, like in Africa, Central America and Asia and Pacific as a former world food program officer. Well, my practice was mostly in the environment in connection with health. I have witnessed a lot of devastating impact of poor environmental planning, but developing countries is different from United States. When I came here, I said I'm in a very beautiful environment, even here in Waukegan; but when I saw that coal plant smoking, and when I bring my grandchildren in the restaurant, I'm not sure how this can impact myself directly. But when my two grandkids get the asthma, all I can say is, "Oh, even here in Waukegan, our environment is not safe." So my daughter told me that. The doctor said we have to live in another place where there is cleaner air. Fortunately, my daughter has a very good assignment, and she was sent -- her husband and my daughter get a job in Florida, where they were assigned in a beautiful place over there. I suddenly find that when I visit them, my two grandkids with asthma was getting very, very healthy; and then my son-in-law and my daughter keep on telling me, "When are you going to Florida?" "Oh, my God, I say, "I cannot leave Waukegan, because I have my job here," and it seems to me the environment is good. So when I retired, one week -- one year ago from Abbot Laboratory, where I worked as a lab tech for 33 years, and I work double time as a public school teacher in Waukegan High School in North Chicago High School, I said, "It seems to me that I love Waukegan, and this will become a retirement place."

But every time I see that coal plant and the big plant is smoking, I said -- I check always my doctor, "How is my health?" And he said, "Good. You are immune to those air water pollution impact because you have been living in many places where you get some immunity." I should say I'm just lucky. I am not like my grandchildren who were born here in Waukegan. So I should say there is always a good luck in United States, and I trust America, even whatever they say America isn't that, I have been living it.

I still find this place the best place to live in the world, and I'm still going to use Waukegan as my retirement age, retirement place, because I have my house already.

Response:

Oral Comment 28

I'm born and raised in Waukegan. Born in St. Theresa Hospital in 1948, and the lakefront was there for us to use as a kid. We go to the lakefront now, and you can't fish in it. You can't swim in it. They have all kinds of warnings against it. They closed the Zion plant because it was unsafe, reopened the coal plant. The coal plant is operating for 20 years without a permit. It's just unbelievable that we residents that live here, have to put up with this, because it seems like it's just about corporate. It's about profit. It's not about keeping our kids safe, keeping our air safe. It's just like the one person that said, you know, this is Mother Earth. We have to take care of it. If we don't take care of it, who is going to? And I realize is this just a forum. Everything has already been said, but it does irritate us. The residents here of Waukegan, if someone hadn't notified me that this was even happening, I wouldn't have even have known. It's just sad that we continue to allow this to happen.

So I implore the EPA to relook at this plant. If this plant isn't necessary, close it. If it is necessary, put the controls in it that are going to keep our air clean. That's all we ask. We ask if you want to operate the plant, operate it cleanly. If you can't fix it, because it's an old plant, that plant has been there ever since I was a kid, so it's a pretty old plant, that doesn't mean it can't be fixed. I'm an engineer by trade. Everything can be fixed, so fix it. Fix it or close it. It's that simple.

Response:

Oral Comment 29

I'm a resident of Grayslake, which is up the road; and being a Grayslake resident, I am affected by this as well. It is far reaching is my point. I also would like to say I was born in Hammond, Indiana, around U.S. Steel, DuPont, all these other big lakefront facilities. I grew up with a lot of pollution; and interestingly, we used to laugh when we would smell some of the horrible smells coming from of them. We used to laugh at this, and now it's not funny. That was as a kid traveling. I come out here from the city. We moved up to the city. Then two-and-a-half years ago moved out here to Lake County of which I love. I have relatives out here, and I moved out here thinking, you know, wide-open spaces, clean air, and it's just not true.

The harsh reality is the lake is not what it should be, and I'm very concerned, not only with the air quality, but the water quality. Even if there's never a day where we could swim in the lake, we can use it for better purposes than just riding in boats. It just is mind boggling to me. I will be 60 this November, and I'm just thinking, like, this is not right. I moved from and grew up in such a polluted area, and now I come out here thinking I'm going to be in the green, less-polluted environment. And I was shocked when I first came out to the lakefront out here and got on the Metra to go for a job interview, and I thought, "Oh, I'll be having lunch on the lake." My reality was shattered, or what I thought was going to be reality. So I just want to say please take this seriously. This is not progress. Jobs, we do need jobs, but we need to work in balance with the manufacturing community. There is residents. Everybody isn't going to move away. So we have to work together, and there is better ways for the environment, for our health, than this business as usual.

Response:

Oral Comment 30

I'm new to the Waukegan area. I was born in Texas, raised in Palatine, and I lived in Aurora for 17 years, but I've relocated to Waukegan. And on behalf of the citizens, the concerned citizens, and those affected from Lake County, and all the citizens of Waukegan, I'm going to challenge each one of you gentlemen to take this lady up on her offer and show up at her radio station.

Response:

Oral Comment 31

I just want to say that this is not an issue about general, you know, let's make a great world and all that. It's a matter of law and expecting a business that operates in Illinois to operate according to the laws of Illinois; but the IEPA has to make sure that happens, or come as close as possible for that to happen. So this is about a draft permit that is not making that happen, and I appeal to you to make it happen, or come as close as possible to reducing the massive pollution that this plant is causing and causing severe health impairment to thousands and thousands of people.

Response:

Oral Comment 32

I'm not one just to say close the plant, because I don't like the plant. I think what we have to do is move forward using our wrinkled brains. We have solutions. The United States makes more packs, including removable orders, than we have in this country by about five times. If we close our daily plants that are polluting the world, making Waukegan suffer, the sooner we do this, as the demand for electricity goes up, and costs go up, then people are going to be more energy efficient, and also the normal energy, which isn't getting very much subsidies at all, and doesn't need them, as long as the power plants have to pay for the medical costs for the problems that they created. What we need to do is think about the future, of our own economy and realize we can solve those problems. Instead of having the power plant pollute the air, we could put turbines offshore. All the existing infrastructure could be used for clean air energy, with minimal costs, and the payback will be much more easily seen.

So I just wish the EPA good luck with a clean power plant. I think it's a good program. We are the first generation to know that we have a problem. We are the last generation to be in a position to solve this problem. Our wrinkled brains put us into this situation, and our thinking will get us out, but we all have to work together.

Response:

Oral Comment 33

I'm not from this neighborhood. I'm from Michigan, but I'm listening to all of these comments, and it just breaks my heart. You people from EPA, I hope you have a conscience. I hope you do, because what you are doing, in my eyes, you are the murders, because you do not keep after that coal plant that should follow the prudence. You are not doing what you're supposed to be doing. Do you have any conscious? I hope you answer God with this.

Response:

G. FOR ADDITIONAL INFORMATION

Questions about the public comment period and permit decision should be

directed to:

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